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# A SHORT HISTORY

OF THE

# ENGLISH BAR

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BY
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OF THE 'FOTRY-FIVE' AND QUEBEC," ETC., ETC.

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To the Hon. Sir Joseph Walton
One of His Majesty's Judges,
of the
King's Bench Division
of the
High Court of Justice.

# INTRODUCTION

A FEW years ago when the writer of these pages was engaged in reporting work at the Law Courts, he conceived the idea of putting together in narrative form some details relating to the history of the English Bar, which has played so large a part in the political and social annals of the country. Various circumstances delayed the fulfilment of the project, but the plan was never entirely lost sight of. The little work now presented to the public will, it is hoped, be deemed a sufficiently adequate description of the customs and traditions of a great profession to which this country is indebted for no small part of that eminence which distinguishes her among surrounding nations. The chequered career of the Inns of Court—where so many illustrious orators, statesmen and judges have received their first notions of the national jurisprudence—presents as interesting and curious a picture of manners and observances as any to be found in history. They are among the few institutions that have come down to us almost intact from the Middle

Ages, and their venerable halls and ancient chambers seem a visible representation of that "gladsome light of jurisprudence" so warmly commended to the student by Lord Coke. In the words of a writer in the *American Jurist*: "we think that everything relating to the early history and antiquities of the Inns of Court must be interesting to the profession here. Wherever the Common law is studied and practised, they must be regarded as the original fountain-head of the law. We can not but think that an American lawyer would wander through their courts and halls, and gaze upon their painted windows with a fervour of interest, which his English brother, long accustomed to them, could hardly conceive of, and might smile at, as a boyish weakness." That the place of the Bar in our national history has ever been a great one cannot be denied. From its ranks have gone forth some of the most fearless exponents of public liberty and justice, whose deeds are no small part of the material that forms the fabric of our fortuitous constitution. Few can contemplate that time honoured society of men with its great traditions, venerable customs and strong knit solidarity, without indulging in some of those feelings of emotion which spring from the recollection of great achievements and the glory of an historic past worthily continued in the present.

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# A Short History of the English Bar

## CHAPTER I

THE late Mr. Grant Allan, so Mr. Andrew Lang assures us, was one of those happy philosophers who are "never puzzled by anything in nature. With the aid of a small pocket microscope, such as a Christian uses for examining Greek gems, and a remark on natural selection, he could explain anything in Botany." The mind of the eighteenth century had also the same facility for finding reasons, and if these were not invariably satisfactory—according to our modern notions of accuracy—they did duty for the time being, and quite amiably left preconceived ideas (and illusions) undisturbed. Occasionally some "ingenious" person would venture off the beaten track and

presume to doubt, but such a display of originality was not appreciated. In a word it was better to hazard a plausible opinion than (in print at least) own a candid admission of ignorance.

In giving judgment in the case of Rex *v.* Gray's Inn, Lord Mansfield did not hesitate to proclaim himself one of the honest minority who preferred frankly not to know rather than foist, under the guise of pomposity and erudition, another item of false knowledge on the world. The suit turned on the obligation of the Benchers of Gray's Inn to call duly qualified candidates to the bar, and in the course of the hearing it became necessary to consider the very root and origin of the Inns of Court. All Lord Mansfield felt himself justified in saying was that they were "voluntary societies whose origin no where distinctly appears"—a remark, which if not very satisfactory, certainly fits in with the general obscurity of the subject.

The beginnings of the Inns of Court must to a certain extent be looked for in the wide spread revival of the Roman Civil Law which took place in Europe in consequence of the discovery of the long lost pandects at Amalfi, A.D. 1130. Fourteen years later, Vacarius, the

Lombard, came from Bologna and founded the Civil Law School at Oxford, where he introduced the study of Justinian. The fashionable study of the Civil jurisprudence and its twin-sister the Canon law, soon spread to London, where schools were set up and a numerous body of students brought together. William Fitz Stephen, the monk of Canterbury, who wrote the life of St. Thomas à Becket, has left on record that "in the reign of King Stephen (1135-54) and of Henry II. (1154-89), there were in London three principal churches which had famous schools, either by privilege and ancient dignity, or by favour of particular persons," for the study of the Civil and the Canon law. These institutions, unfortunately for themselves, fell into the hair-splitting and logic-chopping which marred so much of the work of the Schoolmen and eventually died a natural death. Another attempt to found a school of law in London was suppressed by Henry III. in 1244, the mandate enjoining the Mayor and Sheriffs to see "that no man should set up schools of law in the said city." The reason of this was, of course, the fear that unless these schools were abolished, the Roman code would come in time to supersede the statutes as

well as the "general and particular customs" of the realm.

The notion of legal seminaries however never lost ground, though it was to be developed in accordance with national ideas. The history of the Inns of Court is indissolubly connected in its origin with that of the high Court of Justice of the kingdom. At the conquest, William established the law courts in his palace, or "Aula Regis" as it is sometimes termed, with the great officers of state and barons as judges. This great court was by its nature compelled to follow the king in all his progresses, to the no small inconveniences of suitors who might one year have to repair to Exeter and another year to York. A relief was granted by Magna Charta, which enacted that the Court of Common Pleas—one of the three divisions of the "Aula Regis"—should not follow the king, but be held in some determined place. This "determined place" was Westminster, though the court was not at first held in the famous hall erected by William Rufus in 1099 and rebuilt by Richard II. From this time forward, the development of a national judicial system went forward apace. A court of Exchequer had already been added to the two other divisions

of the "Aula Regis" by Henry I. for the trial of all causes relating to the royal revenue. These three divisions, King's Bench, Common Pleas and Exchequer, continued to administer the law of the nation under the presidency of the Justiciar till the abolition of that office in the reign of Edward I. The three courts after this entered upon a separate and independent existence, the two former under a Chief Justice and the latter under a Chief Baron.

As long as the judicature was in a primitive and transitional state, it was perhaps, natural that its advocates should have been almost exclusively drawn from the ranks of the clergy, as the class most conversant with the sacred and profane learning of the time. The constant association of priests, however, with the strife of litigation could not but have a highly prejudicial effect on their religious character and influence, and in 1218 the fourth Council of the Lateran forbade their practice in the Civil Courts. Clerical advocacy, like most other abuses, died hard, and as late as the reign of Henry III. no fewer than ten of the judges at Westminster were Canons of St. Paul's.

With the clergy excluded from civil pleading,

and three Courts in full working order, the ground was thus prepared for the speedy formation of a lay Bar. Even under Henry II., lay lawyers had begun to make their influence felt. One of these, Ranulph de Glanville, was the famous Justiciar who wrote the treatise "De Legibus et Consuetudinibus Angliae." Before the Norman Conquest, the only recognized body of pleaders in the Duchy were the order of *Counters*—a title derived from the *conte* or narration with which they opened their cases to the court. After the Conquest, the members of this society obtained the appelation of serjeant-counters from the oaths they took to be to their clients "servientes ad legem"—faithful servants in matters legal. By the reign of Henry III.—before the oldest of the Inns of Court had as yet started on its career as a law-hostel—the serjeants were already a powerful body, having the sole and exclusive right of audience in the Court of Common Pleas, wherein were determined, "all matters between subject and subject where the king was not a party." They were also associated with the judges in the work of presiding as Commissioners at the Assizes.

From their ranks were selected the King's Serjeants or Crown Counsel, and their advice was sought by Parliament in all legal difficulties arising out of the course of legislation.

It was the custom of the law-courts at this time, and indeed for long after, to conclude their business at mid-day, after which the serjeants were wont to repair to the "Parvis," or porch of St. Paul's, for the purpose of meeting their clients in consultation. Chaucer refers to this in his well-known lines:

> "A serjeant of the law ware and wise,
> That often had y been at the 'Parvise,'
> There was also, full rich of excellence.
> Discreet he was, and of great reverence;
> He seemed such, his words were so wise.
> Justice he was full often in assize.
> By patent and by pleine commissioun."
>
> "Prologue, Canterbury Tales."

Even after these porch consultations had fallen into disuse, it was customary for serjeants-at-law on their creation to repair to St. Paul's and there choose their pillars much in the same way that distinguished members of the Stock Exchange "do in their place of meeting to this day."

But such a staff of pleaders, however expert,

was insufficient to cope with the constantly increasing business of the Courts. To meet the difficulty, Edward I. in 1292, issued an ordinance empowering John de Mettingham, Chief Justice of the Common Pleas, and his brother serjeants to select from the learners and apprentices of the Common Law a certain number of the best qualified to act as apprentices and attorneys for the King's Courts. What individuals composed this secondary class of lawyers, or how their legal education and "apprenticeship" was conducted, does not appear. That many of them were clerks or pupils of the serjeants, seems to be the most probable solution; be the explanation what it may, this new accession to the existing body of Counsel was destined, not merely to play a leading part in forensic history, but ultimately to supersede the older order of juris-consults.

The article of the Great Charter—that Common Pleas should no longer follow the King's Court but be held in some certain place—was the means of bringing together all those who followed the profession of municipal law, and forming them into one aggregate body. The Courts being at West-

minster, these practitioners naturally made their settlement contiguous to them. The locality chosen lay between the seat of the judicature and the City of London, both for "the advantage of ready access to the one and plenty of provisions in the other." From this centralization sprang the Inns of Court and Chancery—"the lawyers University" as old Fortescue not inaptly termed them.

The housing of students in hostels or inns was no new mode of lodgment. Already at Cambridge—from 1257 when Peterhouse was appropriated by Hugh de Balsam for the use of the scholars—this mode had been in vogue, and the system was gradually adopted at Oxford. The example of the universities was followed by the law students of London. The first inn or hostel that appears to have been used for the purpose was Thavies, which was leased from John Thavie "a worthy citizen and armourer" of London, who died 1350. The success of this undertaking warranted a second, and in 1345 Isabel, Lady de Clifford demised her hostel (Clifford's Inn) to the apprentices *ad legem* for an annual rent of £10. Furnival's Inn and Barnard's Inn were acquired in the reigns of Henry IV. and Henry

VI. respectively. The last to be added to the list was New Inn, which was appropriated to the purpose of legal study in the reign of Edward IV.

Though the oldest of the inns, from the standpoint of foundation, these institutions were destined to lose their prestige and in course of time came to be regarded as preparatory schools to the four great Inns of Court. As late as the reign of James I, it was customary for bar-students to enter themselves at one of these minor inns before proceeding to one of the greater societies. John Selden, the Antiquary (1584-1654), seems to have been the last of the great lawyers who followed this practice.

It was perhaps fitting, considering the ecclesiastical atmosphere in which many of our juridical institutions were cradled—that the oldest of these "greater Societies" should have taken its rise in the Temple, the London home of the famous religio-military order founded at Jerusalem by Hugh de Payens in 1118. The service of the brotherhood in protecting Christian pilgrims in the East, obtained for the Order enormous temporal possessions, to which must be attributed in no small measure the

cause of its ultimate fall. That great laxity undermined the primitive fervour of the knights cannot be denied; but that the whole Order of Templars became guilty of "profligacy, idolatry, and apostasy" seems no less impossible of belief. Their merciless destruction in France under Philip the Fair is one of the foulest blots on the history of that country, but happily the suppression of the Order in England was not accompanied with a like violation of justice and humanity. The first settlement of the Templars in London was at the Old Bourne (Holborn) end of Chancery Lane, near to which Southampton Buildings now stand. After a time the Order purchased an extensive area beween Fleet Street and the river, where it erected its monastery, barracks, council chamber and church. This latter was consecrated in 1185 by Heraclius, Patriarch of Jerusalem, during his visit to England to procure aid against Saladin. When the bull of Pope Clement V., suspending the Order, arrived in England, the knights were arrested, and their property in this country taken possession of by the Crown (1307). Eleven years later, Edward II. granted the London Temple to the Knights-

Hospitallers of St. John of Jerusalem. These in turn let the property about 1324 to the law students who "came from Thavie's Inn in Holborn," the rent being fixed at £10 per annum.

The origin of the division of the Temple into two parts, the inner and the middle, is obscure. We may remark that the names Inner and Middle imply the existence of a third Temple, the Outer, which appears never to have been occupied by lawyers, but passed into possession of the Essex family. When Wat Tyler's followers ran riot in London, 1381, and destroyed this among other public buildings, the place was merely described as a residence of "law apprentices," without any reference to two societies. By Henry VIII.'s time, however, the separation had become complete, each Inn having its own Reader and Treasurer.

Lincoln's Inn, the largest of the Inns of Court, derives its name from the hostel of the Earls of Lincoln which formerly stood close to its north side, though the Inn itself had no connection with the noble family in question.

The contrary, however, was long thought to be the case, and by an heraldic error the

Society bore the Lincoln arms from 1515 to 1702, when the mistake was rectified at the instigation of Sir Richard Holford, one of the Benchers of the Inn. As a matter of fact, most of the site on which Lincoln's Inn now stands, belonged of old to the See of Chichester, Ralph de Neville, Lord High Chancellor of England and Bishop of that diocese, having built a magnificent palace here in the reign of Henry III. In the reign of Henry VIII. the greater part of the property was leased to the law students; and in 1536, Richard Sampson, Bishop of Chichester, passed on the remainder to William Suliard, one of the Benchers, and his nephew, in the 22nd year of Elizabeth, made it over to the Society of Lincoln's Inn.* Gray's Inn, the last of the great Societies, stands on the ancient manor of Portpole, formerly the property of the Lords Grey de Wilton, and was sold by Emmanuel, Lord Grey, to the monks of Shene, in 1506, and by them demised to the law students.

Like the law-apprentices, the serjeants had

* *Lincoln's Inn*, by H. Spilsbury, (London: William Pickering, 1850).

their Inns for practice and occasional residence. The first of these, known as Scrope Inn from its previous owner, Lord Scrope of Bolton, was in Holborn, opposite St. Andrew's Church. About the reign of Henry IV., it began to be abandoned for another in Fleet Street which was leased by the Order from the Dean and Chapter of York. This building was burnt down in the Great Fire (1666), but "rebuilt in a much more uniform style than before," and occupied by the serjeants till 1730, when it was wholly abandoned by them in favour of the Inn at the Fleet Street end of Chancery Lane. These latter premises, which had been partly occupied by members of the Coif since 1496, were entirely bought up by the Order in 1833—a year before it was threatened with the loss of its "precedence and pre-audience" in the Common Pleas (see p. 139). The windows of the Inn are, or were till recently, adorned with the armorial bearings of the various members, among which the heraldic device of the Order, an Ibis *proper* on a shield *or*, stood forth conspicuous.

On being called to the dignity of a serjeant-at-law by the Crown, a barrister was duly rung out of his Inn of Court, from the Benchers of which he received a formal retaining fee in gold.

It was customary for the newly created serjeants to present gold rings with mottoes, expressive of their individual ideas of law and equity, not only to the Sovereign, Lord Chancellor or Lord Keeper, but also to the great officers of state and Chief Justices. In addition to this outlay, rich liveries were presented to "an army of their servants." The feasts and rejoicings incidental to the creation often lasted a week, part of the ceremonial consisting in a state visit to the Church of St. Thomas of Acres or Acons, Cheapside, and the shrine of St. Erconwald at "Paules," where offerings were made. At this latter place the serjeants were appointed to their pillars of consultation by the steward of the feast—a custom which survived till as late as the reign of Charles I.

The cost of these feasts and functions was enormous, especially as royalty and suite often made a point of being present. Thus in November, 1504, the newly made serjeants "dined the King [Henry VII.] and all his nobles" at Lambeth Palace. The expense of these entertainments was in fact the cause of their decline. By the reign of James I. they had become much restricted, it being then the custom for several serjeants to combine in

giving one banquet, far less lavish than those of former times. Francis North (Lord Guildford) gave a feast on his receiving the coif in 1674, and fourteen newly made serjeants held a similiar entertainment in the Middle Temple Hall in 1736. After the accession of George III., these display were declared unsuitable to the altered conditions of the times—a truly self-denying ordinance in an age when the pleasures of the table were part of the ritual of every function, big or little. The presentation of rings, however, continued to be made by the serjeants on their creation, right down to the time of the appointment of the last members of the Order.

A return must now be made to the Inns of Court. The burning of the Temple by Tyler's mob (1381), was but an incident in its career. With the rebuilding came an increased spell of prosperity, for the Inns had assumed "a kind of collegiate order, where exercises were performed, lectures read and degrees conferred in the Common law as at other Universities in the Civil." The Temple had its full share of the 2000 students who in the reign of Henry VI. "resorted to the Inns of Court and Chancery." Some of these must have stood by with bated

breath as Somerset and Warwick plucked the red and white roses in their fair garden—the signal of the bloody strife which was to all but destroy the ancient nobility and indirectly lead to some revolutionary changes in the political, social and religious institutions of the country.*

On "working daies," as old Chief Justice Fortescue informs us, most of the students of the Inns of Court applied themselves to the study of the law, and on "holy daies" to the Holy Scripture and historical chronicles. The fifteenth century aspirants to forensic fame, however, were not indifferent to the lighter and more graceful accomplishments. They learnt "to sing and to exercise themselves in all kinds of harmony;" also "dauncing" and other noblemen's pastimes. Sir Christopher Hatton must have acquired the skill in dancing, which so greatly captivated Queen Elizabeth, when keeping his terms at the Inner Temple.

The "kind of Collegiate order" into which the Inns of Court shaped themselves, was early shown by the several grades existing within the societies themselves, and the various

* "Henry VI.," Part 1. Act II., Scene iv.

exercises required of all who aspired to the bar. The word "barrister" perpetuates, to some extent, the ancient discipline which prevailed at the Inns where the dais of the governing body or Benchers was separated by a bar from the *profanum vulgus* of the hall. Next to the Benchers were the *utter barristers* or advanced students, who after they had attained a certain standing were called from the body of the hall to the first place outside the bar for the purpose of taking part in the moots or public arguments on points of law. The other students assembled near the centre of the hall and were called *inner barristers*.

The utter barrister was, however, long regarded as a kind of advanced learner, and as such forbidden to plead in the courts. In the old law reports the title is ignored, the only distinction recorded being that of serjeants and apprenticii ad legem. So obscure, indeed, was the appelation, that even Dugdale, an immense authority on matters juridical, thought the terms the same. In the case of the Duchy of Lancaster given in Plowden's Reports (Vol. 1. p. 213), the case is described as argued by Carrel, apprentice, and Plowden, apprentice, though the latter had been a serjeant-at-law

some four years. By the reign of Elizabeth, the utter barristers had become so far a recognized body that they were allowed to practise both as "common counsellors" in their chambers and "at the barres."

The Benchers or Ancients were those senior counsel who had "openly read" or lectured in the hall of the Inn, and to them as to men "meetest both for their age, discretion and wisdomes," the government of the societies was entrusted. One of their number was yearly chosen as treasurer, and upon the Benchers as a body devolved the task of appointing the Readers and framing rules for the government of the respective houses.

The exact mode of legal education in the Inns before the time of the Commonwealth is somewhat uncertain, and the subject has given rise to much speculation among historians and antiquarians. It seems mainly to have consisted of the *readings* and *mootings* which would appear to have been conducted in the same way both in the Inns of Chancery and the larger Houses of Court. In those latter Societies the readings were carried out as follows: Every year the Benchers chose two Readers, and on certain solemn occasions a lecture was delivered

by one of these on some statute rich in nice points of law. The Reader first explained the whole matter at large, summed up the various arguments bearing on the case and then gave his opinion. The several points raised were then discussed by the utter barristers with the Reader, after which some of the judges and serjeants present gave their opinions in turn. Such readings were no mere academic formalities. They not only formed a real test of legal knowledge and forensic ability, but were often most valuable as contributions to professional literature. Among these may be instanced Challis on the Statute of Sewers, and Lord Bacon on that of Uses.

The exercise known as mooting was another but somewhat different method of professional instruction. It was in fact a mock trial at which the Reader and two or more Benchers presided in open hall. An inner-barrister advanced to the table and there proposed in law-French some kind of action on behalf of a fictitious plaintiff. After being replied to by another inner-barrister representing the defendant, the Reader and Benchers gave their opinions in order. Students who wilfully absented themselves from a moot without

lawful excuse were liable to a considerable fine, which went to the treasury of the house.

The decline of these useful exercises, which culminated in the long oblivion of systematic legal education in this country, will be referred to later.

Though the oldest of the greater Inns of Court traces its history down to the reign of Edward II., student-rolls of the Societies belong to a much later period. The books of Lincoln's Inn recording calls to the bar and other matters commence in 1423. Those of the Inner Temple, which contain the admittances, date from 1547, and the registers of calls to the bar from 1590. A regular list of admissions and calls at the Middle Temple exists from 1600. The earlier records of Gray's Inn were destroyed by fire, and hence the lists of this Society only go back as far as 1650, though the Harlean MSS. in the British Museum (No. 1912), give the names of gentlemen admitted as students between 1521 and 1674. The Lansdown MS., (No. 106), in the same place, has a list of Benchers, utter-barristers and associates of Lincoln's Inn and the Inner Temple, together with the names of

students of the Inns of Court generally during the latter part of Elizabeth's reign.

Before the sixteenth century, the tenure of the Inns of Court by the several Societies was very precarious, the students being regarded in the light of lodgers by the real owners of the halls and buildings. Living accommodation, too, was bad, and in 1596 the Judges and Benchers decided that no one was to be admitted to any of the Societies till he could acquire chambers, but must meanwhile enter himself at one of the Inns of Chancery. As the law University, the four great houses still enforced continuous residence during term time, as well as attendance at the prescribed exercises.

The "unfledged race" of lawyers, despite the gravity of their calling and surroundings, did not all "scorn delights and live laborious days." In Henry VIII.'s time, the gentlemen of the Temple were much addicted to a form of gambling known as "shove and slip groats" which was more than once publicly interdicted by the Benchers. The fashion of wearing rapiers which began to prevail about the middle of the sixteenth century, also gave rise to a considerable amount of trouble. Brawls

in London became frequent, especially in the neighbourhood of the Temple, and to abate the nuisance Templars were forbidden to bring into the dining-hall any other weapon than a dagger or knife for cutting the daily rations of beef and mutton. In spite of this precaution, outbursts occasionally took place, as when Sir John Davies—afterwards Chief Justice of the King's Bench and Speaker of the Irish House of Commons—publicly "bastinadoed" a man at dinner in the Temple hall, for which offence he was expelled, though afterwards readmitted at the intercession of the excellent Lord Ellesmere.

The discipline of the Inns of Court was sometimes regulated by external authority as when in 1525 the Benchers both of the greater Societies and the Inns of Chancery were advised by the Star Chamber "that they should not from henceforth suffer the gentlemen students among them to be out of their houses after six of the clock in the night without very great and necessary causes, nor to weare upon them any manner of weapon." At Gray's Inn the students were frequently kept in mind of their pupilary state by such orders of the Bench as that which appeared in

1574 forbidding them to wear "any gown or garment of a bright colour upon a penalty of expulsion," and the prohibition of 1585 against "hats in hall," for which breach of decorum offenders were liable to a fine of three shillings and four pence.*

A happier method of recreation than fighting or gaming came in with the accession of James I., when the acting of masques and the presentation of pageants superseded to a great extent the baiting of bulls and bears and other brutal pastimes of the Tudor regime. Two years before the death of Queen Elizabeth, Shakespeare's "Twelfth Night" was acted for the first time in the hall of the Middle Temple as part of the Christmas festivities of 1601, and that exquisite play, so "full of the truest and most beautiful humanities," brought the more cultured forms of amusement into favour. Masques were acted before James I. at Gray's Inn—with Lord Bacon as stage-manager—and on one occasion the "young gentlemen" of the same Society repaired to Whitehall and presented the "Masque of Flowers" to the admiring gaze of the Scottish Solomon and

* "Notes on Gray's Inn," by W. R. Douthwaite, (London, 1876).

his Court. The "Inner Temple Masque," written by William Browne, a pupil of Spenser and a member of the Society, was performed at Christmas 1614, and so great was the number of spectators that no little damage was done to the buildings of the Inn in consequence.*

* For our knowledge of the performance of "Twelfth Night" at the Middle Temple, we are indebted to a chance entry in the Diary of John Manningham, a member of the Society.

See "Briefs and Papers," or Sketches of the Bar and the Press (London: H. S. King and Co., 1872)

## CHAPTER II

TILL the close of the sixteenth century, the time required for "a call to the bar" appears to have been eight years. A few barristers were called after six or seven years of studentship, but this was by favour of some judge or great nobleman. The time of probation was divided up between twelve grand moots in one of the Inns of Chancery and twenty petty moots in term time before the Readers of one of the greater Societies.* In June, 1596, admission to the bar was regulated by an ordinance of the Judges and Benchers limiting the time of studentship to seven years. The "exercises" for the "call" had as heretofore to be fulfilled both "within the House and abroad in Inns of Chancery." Shortly after the accession of James I., a royal mandate, countersigned by Sir Edward Coke,

* Tomlin's "Law Dictionary," 1810.

Lord Bacon and others, forbade any one to be admitted to a House of Court "that is not a gentleman by descent."

In spite of the regulation of 1596 with regard to calls to the bar, the question was not yet finally settled. On the ninth of February, 1617, the Benchers of the Inner Temple decided in a "Parliament" or Council of the body, "that no man shall be called to the bar before he has been full eight years of the House." Such members were likewise to be known as "painful and sufficient students" and to have "frequented and argued grand and petty moots in the Inns of Chancery, and have brought in moots and argued clerks common cases within this house." A noteworthy proviso against favouritism and influence is found in the concluding part of the order whereby "if any man shall procure letters or messages from any great person to the Treasurer or benchers of this House to be called to the bar, he shall for ever after be disabled to receive that degree within this House." *

The Privy Council also occasionally took

* Sir Joseph Walton: "Early History of Legal Studies in England," p. 36.

upon itself the duty of regulating calls to the bar. An order to this effect appeared in Easter term 1574, signed by Sir Nicholas Bacon the Lord Keeper, and several lords directing that "none be called to the utter bar but by the ordinary Council of the House in their general ordinary Councils in term time." None were to be utter-barristers "who had not performed a certain number of mootings," and none were to be admitted to plead "in any of the Courts of Westminster or to sign pleadings unless he be a reader, bencher or five years utter-barrister and continuing that time in exercises of learning."

The religious changes that took place in this country at the Reformation apparently wrought but little alteration in the routine and discipline of the Inns of Court. A proposal was, indeed, put forward to found a great law-school in London with part of the proceeds of the dissolved monasteries, but the scheme, if seriously entertained, came to nothing. Its only result was an elaborate report drawn up by Nicholas Bacon of Gray's Inn for the private information of the King, giving a clear account of the Inns of Court and their daily life—a document of much value to historians.

The natural conservatism of lawyers and the pains taken in subsequent reigns to purge the Inns of "popery" would seem to support the impression that the new tenets were not very acceptable to the members of the legal profession. Some students who afterwards rose to eminence hailed the change with joy, among whom was John Louthe who subsequently abandoned the law for the church and died archdeacon of Nottingham, 1590. He studied at Lincoln's Inn with the son of Sir Richard Southwell at the commencement of Mary's reign when his zeal for "a thorough godly reformation" came near costing him his life. The chaplain of the Inn was "one Cooke hyred now to say Masse" and as the future archdeacon knew him to have been a "detestore" of the old religion during the ultra protestant reign of Edward VI., he told him his "mynd very hotly." This bold rebuke of the time-serving ecclesiastic was doubtless well merited, but outspoken John Louthe had to flee the country and did not venture to return till the accession of Elizabeth.*

*Narratives of the days of the Reformation, "(*Camden Society*, 1859)

The prevalence of Catholics in the Inns of Court was very distasteful to Elizabeth's government, and several steps were taken in consequence to ensure conformity to the State Church in the several Societies. On May 20th 1569, a letter signed by the lords of the Privy Council, was directed to the Benchers ordering them to expel "all Papists out of Commons," but with little apparent result, as in 1580 a Commission came down specially to the Temple to enquire into the religious beliefs of the students. Among the questions put to the Templars on this occasion was the following: "Have you said of late tyme that the marriage of preistes was unlawfull and their children bastardes?" Other interrogatories turned on the refusal of divers students to attend sermons at "Paules Cross" and similar delinquencies.*

One of the immediate results of the Gunpowder Plot (1605) was the act prohibiting Catholics from practicing in the "Common or Civil law," and in the before mentioned order of the Benchers of the Inner Temple relating to calls to the bar, issued in 1617, is a clause stating that all admitted as advocates are to be

*Hist. MSS. Commission, Second Report, pp 43, 155.

"of sound and good religion and free from popery." After the accession of Charles II., the law was occasionally relaxed notably in 1669 when Mr. Richard Allibone, a Catholic, was called to the bar at Gray's Inn. He was created a serjeant-at-law and judge of the King's Bench by James II., in 1687, but died the following year. Nathaniel Piggot, author of a learned Treatise on Recoveries, was called to the bar in 1688, after which no Catholics were admitted as counsellers till the passing of the relief act of 1791.

When Sir John Fortescue wrote his "De Laudibus Legum Angliae in Henry VI.'s reign, the Inns of Court were still "placed in the suburbs out of the noise and turmoil of the city," but the rapid increase of London which set in towards the close of the sixteenth century brought the law Societies very much within the metropolis. The Inns themselves had but few buildings till as late as Charles the Second's reign when the great increase of students made the erection of more chambers a necessity. Sir Julius Caesar, who was treasurer of the Temple about 1600, was chiefly instrumental in providing for living accommodation, though the Inner Temple gateway and most of the Chambers

were not built till 1610. The Middle Temple Hall was erected between 1562-72, and most of the residences around this splendid structure during the following century. At Gray's Inn, the chambers are discribed as "slender, mean and disagreeably incommodious," but some amends for this unpleasing state of affairs were made by Lord Bacon who planted the gardens with elms and laid out some pleasant walks.* Later on, a poet, with a turn for topographical description, summed up the characteristics of the Inns of Court in the following clever distich:

"Gray's Inn for walks, Lincoln's Inn for wall,
The Inner Temple for a garden, and the Middle
for a hall."

Lincoln's Inn seems to have remained the longest the most rural of the Inns of Court, for as late as Henry VIII'.s time the students were forbidden to shoot the rabbits that abounded on the estate! Before 1602, no buildings existed except on the north side, and New Square was not erected till nearly eighty years later. When the wall separating the Inn from

*For planting the walks with elms, Lord Bacon received from the Benchers the sum of £7. 15. 4.

Chancery Lane was built (1591?), "Rare Ben Jonson" is said to have been one of the bricklayers employed in the work. A Bencher of the Society who happened to he passing by heard him repeat some Greek names out of Homer, and finding the young labourer to have "a wit extraordinary" gave him an exhibition or scholarship at Trinity College, Cambridge. The gate of Lincoln's, Inn on this side was built by Sir Thomas Lovell, a member of the Society and sometime treasurer to Henry VII.*

The noble Chapel of the Society—which replaced an older one erected by William Rede, Bishop of Chichester, about 1370—was completed in 1623. The style is "after the Gothick manner" from design by Inigo Jones. The carved oak benches are Jacobean, and the stain glass windows represent such subjects as the twelve Apostles, King David playing on the Harp, Abraham, Jeremiah, etc. In the crypt beneath the building repose the remains

* He was also a great benefactor to the Nuns of Haliwell, or Holywell, in the parish of St. Leonard's, Shoreditch, and on the windows of the convent appeared these lines:

"All the Nunnes of Holywell.
Pray for the soul of Sir Thomas Lovell."

of John Thurloe, secretary to Cromwell, William Prynne, etc.

The old hall of the Society, erected in 1506, is seventy-one feet long by thirty-two feet broad. The exterior was extensively repaired by Bernasconi in 1806, and here, prior to the opening of the New Law Courts, the Lord High Chancellor held his Court. The new hall, a splendid building, one hundred and twenty feet long, was solemnly opened by Queen Victoria and the Prince Consort, October 30th, 1845. Upwards of four hundred members of the Society were present on this auspicious occasion, and at the conclusion, of the Ceremony, Prince Albert was created a Bencher of the Inn. This was the first visit of the reigning sovereign to the Society since that of Charles II. in February, 1671. In reply to the loyal address of the house, the Queen said, *inter alia*: "I recognise the services rendered to the Crown at various periods of our history by distinguished members of this society, and I gladly testify my respect for the profession of the law by which I am aided in administering justice and in maintaining the prerogatives of the Crown and the rights of my people."

The fine old houses on the western side of

Lincoln's Inn Fields with their "Palladian walls, Venetian doors, Grotesque roofs and stucco floors," were erected by Inigo Jones and soon became fashionable. The enclosing of the Fields with buildings was very distasteful to the Hon. Society adjoining, and on August 16th, 1641, the Benchers and students presented a petition to Parliament complaining of "the great increase of buildings near Lincoln's Inn . . . and the loss of fresh air which the petitioners formerly enjoyed." The legislature was too engrossed with the political troubles of the time to take any notice of the lawyers' grievance, and the building went on unchecked. A century later, Gay in his *Trivia* recounted the peculiar dangers to be encountered near Lincoln's Inn—open brigandage in fact under the very eyes of the law :

"Where Lincoln's Inn wide space is railed around,
Cross not with venturous step; there oft is found,
The lurking thief; who while the daylight shone,
Made the wall echo with his begging tone:
That crutch which late compassion moved, shall wound
Thy bleeding head, and fell thee to the ground."

In the general array of the nation at the time of the Spanish Armada, the gentlemen of the Inns of Court raised an armed company

against the invaders. When the open rupture between Charles I. and the Parliament was imminent the partizan spirit of Royalist and Roundhead ran high in the several societies. The puritan feeling of many of the lawyers had already been manifested in Prynne's "Histriomastix" against masques and plays; Sir Edward Coke's vindication of popular claims in the "Petition of Right," and Selden's efforts for abolishing episcopacy and arranging the impeachment of Lord Strafford. Not a few of the Parliamentary leaders also were themselves members of the Inns. Cromwell is said to have kept terms for two years at Lincoln's Inn, but if tradition speaks true, he totally neglected law for "a round of dissipation." Pym was a barrister, and Hampden had studied at the Inner Temple. In February, 1632, Henry Sherfield, one of the Benchers of Lincoln's Inn, was fined £500 and imprisoned in the Fleet for wilfully breaking, in an outburst of puritanic zeal, a stain glass window representing the 'Creation' at St. Edmund's Church, New Sarum. As a set off against all this, was the demonstration of loyalty to the king by the great bulk of the law students when his majesty went to witness the Masque at the Temple in

February, 1633. Nine years later, a number of the law gentlemen appeared in arms for the royal cause. "We have great store of soldiers now at St. Albans," wrote the Countess of Sussex to Sir R. Verney, on September 9th, 1642. "They say that three score carts of ammunition and things for that use, and ten great pieces drawn upon wheels, and the Inns of Court gentlemen to guard my Lord's person, is come too, and they say very fine and well horsed, &c."*

Notwithstanding this and the fact that in 1645 a regiment composed of "the gentlemen of the Inns of Court and Chancery" was raised for the king under the command of Edward Lord Littleton, Lord Keeper of the Great Seal, the majority of the Bar who took an active part in political affairs, sided with the Parliament. Bulstrode Whitelock, Lt.-General Jones, and Commissary Ireton are some of the gentlemen of the robe who rose to eminence in the service of the Commonwealth. The support of the Bar, however, could not endear the profession to the puritans who generally referred to the lawyers as the "Sons of Zeruiah," and more than once was a motion put forward in the

* Hist. MSS. Com. 7th Report, p. 440.

House to exclude legal practitioners from Parliament. The Court of Chancery—though it does not seem to have as yet become the emblem of the "law's delay"—was especially an object of dislike, and Barebones' Parliament seriously contemplated abolishing it altogether, but the motion was lost by the Speaker's vote.

During the Civil war, the routine of the Inns of Court was greatly interrupted, and the Societies themselves much depleted, owing to the absence of many of the members, either in the country or with one or other of the armies. The few students remaining were forbidden to leave London without special licence, and in November, 1646, the Commons decreed that no royalist should be allowed "to live in any of the Inns of the Court or Chancery;" Counsel in practice were also required to give "a pledge to be faithful to the Commonwealth."

Lincoln's Inn became so encumbered with debt that in 1645 two of the Benchers were directed to sell most of the plate as one means of "raising the wind."*

* As early as March, 1642, we find Robert Fane, a student of the Middle Temple, petitioning Parliament for leave to visit his sister, Lady Elizabeth Cope at Bruerne in Oxfordshire, to "collect the rents."—"Hist. MSS. Com. 5th Rep. p. 75."

Things greatly improved after the establishment of the Commonwealth, an attempt being made to reform "the government of the Inns and revive the Collegiate exercises." As a consequence, the number of students rapidly increased, so that when Mr. Justice Rokeby was keeping his terms at Gray's Inn, 1652-8, the Inns of Court are described by him as being filled "with young gentlemen of the first families in the north." The recent constitutional troubles would also seem to have given an impetus to the systematic study of English history, but official superintendence and regulation of legal education was already on the decline. As far back as the commencement of the century, the useful practices of mooting and reading had already lost much of their utility. Lord Coke in his *First Institute* (p. 280), praises the ancient readings but describes "the modern performances" as of no authority. The reason of this decadence is ascribed by Mr. Justice Walton to the "rapidly accumulating volumes of treatises" in the libraries, which attracted personal research; also to the increasing business of the Courts which made it "more and more difficult for the leaders of the Bar to give their time and

attention to Readings, Moots, and other exercises of learning in the Inns of Court." If the "readings" had been mere lectures as at the universities, it would have been a different matter, but a bad tradition had associated them with costly feasts and entertainments, the burden of which fell on the purse of the unlucky exponent. A barrister who undertook the onus of a readership had to relinquish a portion of his practice for the time being, and make up his mind to be so many hundreds or even thousands of pounds out of pocket as the price of enlightening a limited number of persons on some musty statute. The *Liber Famelicus* of Sir James Whitelock, father of Bulstrode Whitelock, Commissioner of the Great Seal under the Commonwealth, contains an interesting entry which will enable the present generation to understand what a "reading" really implied. Sir James was called to the bench of Lincoln's Inn in Hilary term, 1608, and appointed to read during the August of the following year. When the time drew near, he had to quit his circuit at Bridgenorth and return to London, which he did on July 24th "to prepare myself towards my reading" on the *21st of Henry*

*VIII., chap.* 13. The reading, or rather accompanying festivities lasted a week. Among the notables entertained were "the Embassadour of the Low Countryes;" the Archbishop of Canterbury; the Privy Seal; Don Marco Antonio de Dominis, Archbishop of Spalatro; the Bishops of London, Rochester, and Llandaff, besides "divers knights and gentlemen." The whole expense to the Reader was upwards of £4,000 in modern money! No wonder the gentlemen of the long robe declined the ruinous honour of expounding law to a more or less interested audience at the rate of nearly £600 a day. It was in vain that Benchers and Treasurers brought pressure to bear on those who declined the offer of readerships, and imposed fines on the recalcitrant amounting in some cases to £30. Compulsory methods of this description were, indeed, no new thing, John Selden himself having been mulcted in £20 for refusing to read at Lyon's Inn.

After the Restoration, readings were resumed at some of the Inns in a desultory way, but as an institution they were doomed. The following note occurs in a record of the time dated January 3rd, 1668: "Entered upon

readings at the Middle Temple relating to that branch of 33 Hen. VIII., cp. 39 which subjects estates tail to the King's debts by judgment, recognizance, etc." (His. MSS. 5 Rep. p. 300). There were apparently no official mootings during this period, though in at least two of the Inns (the Inner and Middle Temple), the students were accustomed to frequent "the old cloister walks" for the purpose of *bolting*, i.e., privately discussing points of law. Francis North, Lord Keeper Guildford, who kept his terms here at this time, "fell into the way of putting cases (as they call it) which much improved him, and he was very good at it, being of a ready apprehension, a nice distinguisher, and prompt speaker."

It was therefore entirely fitting, that one so imbued with the spirit of the ancient discipline, should have been selected to give what proved to be the last reading on the old sumptuous scale. This event took place in the Temple hall in 1672, the subject chosen being the Statute of Fines, which some may think not a bad topical allusion to an exercise which cost the Reader one thousand pounds. A large number of the Court and prime nobility

attended the festivities which extended over three days and were characterised by much boisterous merriment. Seven years later, ten volumes of Year Books, or reports of cases, were published by subscription, and in recommending their perusal "to all students and professors of the law," the Judges little thought that they were uttering what was practically the last official pronouncement on the subject of legal education for nearly a century and a half! It is true that in 1680 the Benchers of Lincoln's Inn passed a resolution to read in turn, but no further lectures were delivered. The office of Reader was henceforth retained in the Inns of Court as a mere relic of the past, till a recent revival restored under improved conditions, its proper functions and significance.

With the passing of the last semblance of organized instruction, the Inns of Court because mere institutions for admitting persons to the bar, the acquisition or not of the necessary professional knowledge being left entirely to the discretion of each individual. It was a state of things in entire accordance with the slip-shod ideas and supine indifference of a pleasure-loving age. For generations the Inns of

Court remained without official instruction of any sort, though it speaks much for the traditions of the Societies and the earnestness of their *alumni* that they never ceased to be the centre of all that was best in the intellectual life of the day. When the "readings" with their odds and ends of law-French and Latin went out into the darkness of oblivion, polite literature stepped into their place. "Wood's Institutes" and "Finch's Law" shared a divided reign with Beaumont and Fletcher, Butler and Dryden, Congreve and Aphra Behn. The "pert Templar" became a critic of the belles lettres, and foremost among the wits, whereas his predecessors had been simply regarded by the outer world as a race that knew or cared for little else save black-letter tomes and musty precedents. Polite literature ultimately came to clothe the very forms of law with an elegance of diction not dreamed of in the philosophy of the older jurists, and thus deprived an arduous study of one of its most repellent features.

The general history of the Bar during this period is not without its features of interest. Charles II., like the shrewd man that he was, wisely shut his eyes to the republican bias of

the lawyers during the Commonwealth, though the tergiversation of some of the leaders of the Bar did not escape the lash of Butler's satire. Mr. Serjeant Glynne, who had held the office of Chief Justice of the Upper Bench—as the King's Bench was known during the Parliamentary regime—was not only restored to favour by Charles, but received the honour of knighthood. His Majesty showed his interest in the legal societies by paying a state visit to Lincoln's Inn on February 29th, 1671, upon which occasion he dined in the hall "under a canopy of state" with the Duke of York, Prince Rupert and other distinguised personages. At the conclusion of the feast, the King and suite enrolled their names on the membership books of the Inn, the noblemen in attendance borrowing gowns from the students and putting them on "to the great diversion of all present." During the confusion and terror caused in London by the Great Plague of 1665, the Inns of Court, like other public institutions, were almost deserted. It has been said, though on slender authority, that George, afterwards Lord Chancellor Jeffreys, seized on the occasion of the general panic to assume the bar-gown and appear at the Kingston

Assizes without waiting to be regularly called by the Benchers of the Inner Temple. This period, too, witnessed the rise of Sir Edmund Saunders who from an errand boy in the Inns of Courts passed through all the ranks of the profession to the exalted post of Chief Justice of the King's Bench—thus proving that the bar even in an age of patronage was an avenue to fame open to the merit of the humblest.

The reign of Charles II. is further remarkable for the final establishment of the rank of King's Counsel with its right of precedence and pre-audience over all other grades of the Bar. In 1588, Francis Bacon, Lord Verulam obtained from Queen Elizabeth the title of "counsel extraordinary to Her Majesty," a purely honorary distinction, however, without fee or precedence. When James I. ascended the throne, the philosopher, ever with an eye to the main chance, got the king to make the title a reality with a pension of £40 a year and precedence over the rest of the Bar except the two "most ancient" serjeants. No more King's Counsel were appointed till 1668 when Francis North (Lord Guildford) after but seven years at the bar was thus honoured by Charles II. The idea of counsel specially attached to the office

of the ruler seems to have had a hold even on Cromwell, for in an ordinance of the Lords Commissioners in Chancery relating to law-costs, passed in 1654, it was decided that "the Lord Protector's counsel and serjeants-at-law should receive double fees." The rank of King's Counsel, in spite of its splendid privileges—or perhaps on account of them—was long regarded as an anomaly. The serjeants, as representing the original Bar of the nation, were specially piqued at seeing their rank and status over-ridden by one of modern creation. The right of King's Counsel to pre-audience was upheld on the presumption that when in court they were engaged for the Crown, but despite the advantages of the rank it was a long time coming into favour. One of the earlier "Law Lists," that of 1775, gives the number of King's Counsel at fourteen out of a total Bar of one hundred and sixty-five. The pension of £40 a year and an allowance for stationery which went with the office as a sort of retaining fee, were discontinued in the reign of William IV. But the idea of retention for the Crown still holds good, and none of "his Majesty's Counsel learned in the law," may act against the government in any matter without special

leave, which, however, is never refused. The ceremony of calling the newly appointed K.C's within the bar of the several courts, does not appear to go back further than the first decade of the last century.

Few acts of Charles II. caused greater dissatisfaction at the outset among the profession than his appointment of Lord Shaftesbury to the post of Chancellor in 1672. The Earl, though a member of Lincoln's Inn, where he is said to have studied Constitutional Law and English History with much diligence, had never been called to the bar, and his elevation to the woolsack was considered unsuitable and prejudicial. The Chancellor, as if conscious that he had no intrinsic right to the exalted position, declined to wear the customary gold-embroidered black robes of his high office, contenting himself with an "ash coloured gown silver laced." The King's counsel, serjeants and Bar of his Court generally, took a malicious delight in puzzling the lay Chancellor with mischievous questions and motions which often caused him to contradict his own judgments. But Shaftesbury was not to be deterred. By dint of his strong, shrewd common-sense, and it may be added, his fearless disposition, he

steered clear between the Scylla and Charybdis of too much laxity on the one hand and too much strictness on the other, and the initial difficulties of his novel situation being once surmounted, the equity of his decisions was rarely questioned.

The subject of legal incomes at this period, may not be considered out of place in a work professing to treat—however imperfectly—of the history of the English Bar. "A thousand a year was thought a large revenue for a barrister. Two thousand a year was hardly to be made in the King's Bench except by the Crown lawyers." So wrote Lord Macaulay, anxious, of course, to compare the straightened circumstances of the later Stuart period with the overflowing abundance of the Victorian era. The truth is, that lawyers' fees, like all other professional incomes, have ever been regulated by the wealth of the country, and cannot fairly be contrasted after the lapse of two centuries with those customary in an age of abnormal progress and opulence. Commencing with the reign of Elizabeth, we find that even in the "golden days of good Queen Bess," ten shillings was considered "a very usual fee," and one not refused by such an exalted personage as the

Solicitor-General. An old joke of the day said a barrister was like Balaam's ass because he only spoke when he saw the angel! Under James I. the leaders of the bar made £6000 a year, but there was a distinct falling off during the next reign owing to the Civil War and other political troubles. The eminent lawyer whom Butler introduces as the Counsellor of *Hudibras*, was thought passing rich on £500 a year. After the Restoration, Roger North made £4000 per annum by his bar practice, though this was probably on account of his relationship with the Lord Keeper, Guildford, who seems to have had a positive genius for making his own fortune and that of every one connected with him.

During the eighteenth century forensic emoluments greatly increased. Charles Yorke made £7,322 during the last year of his attorney-generalship (1765-6). Lord Eldon's fee book stood at £6,833 in 1786 and £10,557 17s. in 1798. These were, of course, the gains of the leaders; the income of a barrister in good, though not first-class practice, during this period, was about £2,000 a year.

The colossal fees of leading Counsel at the

present day must be, to a certain extent, attributed to the railway mania which reached its zenith in 1845. Parliamentary bar-practice during that period proved to be a veritable El Dorado, and the enormous retainers and other fat honoraria paid to this branch of the profession, influenced in no small degree the fees in the other courts.

Though the fees paid to counsel are regarded strictly in the light of honoraria and as such not recoverable in law, they are nevertheless, subject to stamp duty. In December, 1906, Mr. Justice Bray gave judgment for the Crown in the action of the General Council of the Bar and the Commissioners of Inland Revenue, his Lordship holding that barristers must stamp the vouchers for their fees, as these vouchers are "receipts in the ordinary way as contemplated by the Act."

## CHAPTER III

THE Revolution of 1688 came and passed away without making any appreciable change in the constitution or outward state of the Bar. Not a few of its most eminent members like Treby, Pollexfen and Maynard, welcomed the advent of William III., while others, as Holt and Somers, were frequently consulted by those most active in bringing about the downfall of James II. Whig writers of the School of Sir James Mackintosh and Macaulay have argued and written concerning the opposition lawyers of this period as if they were great and enlightened patriots, really distressed at what they considered as the afflictions of their country and sincerely desirous of removing the evils of the time. Deprived of all rhetorical glamour, the bulk of them merely appear in the light of shrewd far-seeing men who made ready for the coming change from the most personal of motives.

Some of them like Sir Francis Pemberton had their full share in the judicial perversions of the time—perversions for the most part far more chargeable to the temper of the people than the influence or machinations of the Court. On the other hand, the characters of some of the judges and Crown lawyers of the later Stuart period are far from incapable of investigation. George Lord Jeffreys, as a barrister, showed himself "a shrewd and intelligent lawyer, able to discern at the first glance the real merits of a case." His stern repression of the Bristol slave-trade put an end to a scandal that had caused infinitely more grief and suffering than the cruelties of his "bloody Assize." Lord Chancellor Nottingham laid the foundation of modern equity jurisprudence; Sir Orlando Bridgeman, as Chief Baron of the Exchequer, showed himself an acute and learned judge. These examples might be multiplied, but the few given are quite sufficient to prove that the judicial bench under the later Stuarts was not—as has been alleged—recruited from the most incompetent and servile members of the Bar.

The era of the Revolution ushered in a

change with regard to forensic procedure which was the means of greatly extending the practice of counsel, while protecting in the highest degree the rights of the subject. Before the reign of Edward III., the law affecting treason had been extremely vague and indefinite, often depending on whatever construction the Judges chose to put upon it. The Act of 1351 reduced treason to seven well-defined heads, such as compassing the death of the king, levying war against him, aiding his enemies within the realm, and the like. A large number of new treasons were added in the reign of Henry VIII., but reduced under Edward VI., when it was further enacted that no person should be indicted for treason but on the evidence of two witnesses for each overt act, who were to appear at the trial. The accused, however, was not allowed Counsel except to argue such points of law as might arise during the hearing of the case; neither were his witnesses examined on oath, the theory then evidently being that accusation and guilt were correlative terms. Hence, the state trials under the Tudors and in Charles II.'s reign, when the court's animosity or popular prejudice ran high against the prisoner, were

for the most part nothing more than judicial murders under the forms of law.

This scandalous state of things was first commented on by that learned and upright lawyer, Sir Bartholomew Shower, in the following passage from his "Argument for a new Bill of Rights:" "In the name of God what harm can accrue to the public in general or to any man in particular that in cases of state-treason, Counsel should not be allowed the accused?" The defective state of the law appealed even to Jeffreys—who we may suppose was not inclined to quarrel with things as he found them. In the case of Thomas Rosewell, a dissenting minister, indicted for high treason in 1684, his Lordship remarked: "that he thought it a hard case that a man should have counsel to defend himself for a twopenny trespass and his witnesses be examined on oath, but if he stole, committed murder or felony, nay high treason, where life, estate, honour and all were concerned, that he should neither have counsel nor have his witnesses examined upon oath." (Howell: "State Trials," vol. x. p. 207.)

Such arguments were not lost on a generation of political thinkers, and the Whigs

with the fate of Russell and Sidney in their minds, were disposed to put these enlightened notions into practice. The French war and the intrigues carried on by the exiled James II. from St. Germains, naturally retarded the progress of a measure which it was clear would chiefly benefit the supporters of the dethroned monarch. In the session of 1694-5 a bill for regulating trials for treason was brought into the House of Commons, but abandoned in consequence of a resolution that it should not come into operation during the war. In the next session it was negatived in the Lords—so slow is the acceptance of reforms—but after a severe struggle finally passed into law in January, 1696. This most important Act provides that persons accused of treason or misprision of treason, shall be furnished with a copy of the indictment for a fee not exceeding five shillings; they are to have Counsel learned in the law assigned them; a copy of the panel of the jurors, and process to compel the attendance of witnesses. Further, it enacts that no evidence is to be produced against the prisoner which is not mentioned in the indictment, and the Act confirms the clause of the I. Edward VI. c. 12, requiring two

witnesses for each overt act. Finally, the prosecution must be commenced within three years of the alleged treason. ("Annals of England, Vol. III." Oxford: Parker, 1857)

The passing of this act marked an epoch in the history of Constitutional progress, but by an irony of destiny the measure long continued to serve the very party most opposed to those under whose auspices it was called into being. The Jacobite prisoners of 1716 and 1746 were in a far more advantageous position than, say, the regicides in 1660 or the parties to the Rye House Plot in 1683. They had, at least, trained advocates to plead their cause, and if the results were not in the majority of cases favourable to their hopes, the reason must be sought in the temper of the times and their own obvious share in the risings. The Whigs, as a party, did not benefit by the "Treason Act" till the end of the eighteenth century when some of their extreme political descendants were put on trial for propagating the principles of the French Revolution.

The Treason Act did not realize the worst fears of its enemies nor answer the most sanguine expectations of its friends. In most of the State trials that took place after the

adoption of the measure, verdicts were given against the prisoners, notwithstanding the efforts of their counsel, and the restrictions on the Crown evidence adduced. It is greatly to be regretted that that clause of the bill which related to defence by counsel was not extended to cases of felony, which continued to be practically deprived of legal aid till as late as 1836.

The session that saw the passing of the important statute just recorded, witnessed also the introduction of a bill for registering Deeds, Conveyances, and Wills. This measure was vehemently attacked by the lawyers both in and outside the House on no other ground than that it would tend to lessen the number of law-suits! This species of "argument" was, as may be supposed, made the subject of a good deal of satire by those who thought—as Lord Chatham did on a similar occasion—that the lawyers who would not stir a finger to save the British Constitution were ready to rise in a body to protect one cobweb in Westminster Hall.

The abolition of the notorious Alsatia in 1697 did much to improve the neighbourhood of the Temple, which had long suffered from the pre-

sence of some of the greatest ruffians in the metropolis. The closing years of the century were, however, marked by some disturbances within the precincts of the Society itself which merit a passing notice here. On July 16th, 1694, the Benchers and students of the Middle Temple were summoned before Mr. Justice Holt at Serjeant's Inn, when the latter were severely reprimanded for "throwing down the Benchers' table, locking the hall door and keeping them out of commons." What the cause of this remarkable "barring out" may have been is not stated, but exactly three years later another "great hubbub" took place at the Temple, caused this time by the attempted arrest of Mr. Borlase, a Cornish gentleman, one of the students. An enquiry was instituted, but the Templars successfuly defended their action on the ground of their "ancient privileges," and the matter was allowed to drop. Disturbances of this nature were rather frequent at the Inns of Court during the latter part of the seventeenth century, and may perhaps be ascribed to the outburst of exuberance which followed the Restoration. Pepy's in his "Diary" for May 19th, 1667, has the following: "Mr. Howe came to see us; and among other

things told us how the barristers and students of Gray's Inn rose in rebellion against the benchers the other day; who outlawed them and a great deal to do; but now they are at peace again." A similar outbreak of lawlessness occurred at the Temple in March, 1669, on the occasion of the visit of the Lord Mayor. In this case the trouble arose out of the old claim of the Corporation of London to exercise jurisdiction over the two Inns of Court by Temple Bar. As far back as 1459, affrays had taken place between the Templars and the citizens over the same question. When Sir John Lyons, Lord Mayor, dined with the Reader on August 18th, 1556, he tried to assert his claim to authority over the Temple by having the civic sword borne aloft before him, but the Sword-Bearer fearing the consequences of such an act would not comply. The riot at the Temple on March 3rd, 1669, was a most serious affair. The students under the leadership of one Hodges, surrounded the civic authorities, calling them "cuckolds," "dogs," and other opprobrious epithets, and forcing the Sword Bearer to lower the sword. So great was the tumult, that the Lord Mayor and his party were prevented from returning to the

City for several hours, and at one time it was thought that their lives were in danger! The dispute was brought before the Privy Council which put an end to an old and acrimonious feud by deciding in favour of the independence of the Inns.

That provision of the Act of Settlement (1700) by which the Judges hold office during "good behaviour," made permanent an agreement which more than half a century before had been consented to by Charles I., at the request of the Parliament. The establishment of the independence of the Judges influenced to a certain extent the demeanour of the Bar, which, if it assumed a freedom of speech hitherto unknown, also forsook much of that partisan method of address which had disgraced the advocacy of Bacon, Coke, and other noted lawyers in former times.

The reigns of Anne and George I. are singularly barren of events in any way connected with the history of the bar. As might be expected, the principles of Jacobitism which so deeply infected the country gentry and high church clergy at this period, found scarcely any supporters among a profession whose very existence depends on the recognition of the

sovereign *de facto*. Still, the Inns of Court, though decidedly on the side of the heaviest artillery, gave one martyr to right divine in the person of Christopher Layer, a young barrister of the Temple, who was indicted before the King's Bench, for his share in Bishop Atterbury's plot. This conspiracy, which was a wild scheme for seizing the Tower and other public buildings and proclaiming the "Pretender," was divulged to the government by the Regent Orleans. Layer met his fate with resolution at Tyburn on May 17th, 1723, consoled in his last moments by the thought that, though he lost his life, he had preserved his honour intact. The effort which was made about this time to connect the ex-Lord Chancellor, Lord Cowper, with the conspiracy, looks very like an attempt at a practical joke on the part of some of the Whigs, but the humour of the situation was quickly put an end to by a vote of the House of Lords declaring that Lord Cowper's reputation for loyalty remained unsullied.

The solitary event of importance to the Bar which occurred during this reign (George I.), took place in April, 1716, when the House of Lords passed a bill greatly extending one of the provisions of the Treason Act of 1696.

The statute as it stood, only permitted the prisoner's counsel to address the jury on matters of law, but by the new measure it was proposed to allow counsel for the defence to speak to matters of fact as well. The strongly Whig Commons however took a different view of the case. With the rising of 1715 scarcely over, and the country beset on all sides with Jacobite intrigues, it was felt that any further change in the law of treason would be a concession to disloyalty, and on the question being put that the bill be read a second time, the proposal was rejected.

The account of the Bar as given by the unknown author of "London in 1731," ought to do something to disillusionise those who imagine that pressure of business was unknown in the "good old times." Speaking of the leading counsel at this period, our informant writes: "Their fees are so great and their business so engrosses every minute of their time that it is impossible their expenses should equal their income; but it must be confessed they labour very hard, are forced to be up early and late, and to try their constitutions to the utmost (I mean those in full business) in the service of their clients."

This description of the labours of the leading K.C. or Serjeant is not exaggerated. The courts at this period sat at nine o'clock in the morning, and the counsel "in full business" had to be up before cock crow to read over his many briefs for the last time. The Judges usually rose for the day at one or two, unless some great cause protracted the sitting till evening, but while their lordships were driving home to Soho or Bloomsbury Square, the barrister "in full business" was back in his chambers perusing a fresh supply of briefs except when he had to attend hearings either at the Lord Chancellor's or Master of the Rolls till eight or nine in the evening. Even then, the work of the day was not over. It was usual for clients or solicitors to consult with their counsel at this late hour, after which the exhausted barrister was permitted to retire to rest, unless he had some great brief on hand which required special attention. The fees of the hard worked pleader would be from three to five guineas for a single opinion on a case; "upon a hearing" from five to ten or "perhaps a great many more." If the case were adjourned till next day, all fees had to be paid over again.

The stress of work that weighed upon the

upper ranks of the Bar, appears to have given rise to a race of practical rather than scholarly lawyers, for during a debate in the Lords, in November, 1753, the Duke of Bedford remarked that the lawyers of the day "seldom gave themselves the trouble of studying our ancient records and much less the constitution of our government." This may have arisen from the specious nature of the arguments put forward by the older classical authorities of the profession. In a conversation which Lord Mansfield had with a student of one of the Inns, his Lordship "expressed himself in terms of great esteem for Littleton, but spoke of Lord Coke, particularly of his attempting to give reasons for everything (that was his phrase) with great disrespect." A recent authority endorses this slighting opinion with regard to Coke, who was a man prepared to support any fable or forgery, "provided it squared with his own imperious dogmatism."

The act of 1730, which provided that all reports of law cases should henceforth be in English instead of the Latin tongue, was as may well be supposed, greatly resented by the Bar. Law-Latin, though lay sarcasm averred that the meanest wit could understand it

"almost perfectly in ten days without a reader," was, after all, a technical language which had become almost necessary to the profession by reason of long association. Its abrogation, however, did not give the death blow to the study of the classical tongue, as was predicted, nor yet lead to that general diffusion of legal knowledge among "the common people" which it was asserted would gradually follow the printing of the case-records in English!

The hard routine of the law, as described in the preceding pages, was occasionally relieved at this period by those scenes of mirth and good cheer which recalled the revellings and feastings in the Inns of Court during the epoch of the Stuarts. On the elevation of Mr. Charles Talbot to the woolsack in 1733, the newly created Chancellor, treated the Benchers and students of his legal alma mater, Gray's Inn, to a sumptuous entertainment at his own expense. An "elegant dinner" was provided for each mess, with "a flask of claret in addition to port and sack." After the repast the Lord Chancellor, Mr. Justice Page, the serjeants and Benchers, danced round the coal fire in the hall, "according to the old ceremony three times," while the ancient song of the house,

accompanied with music, was rendered by "one Toby Aston dressed as a barrister."

During the rising of 1745, when all Whig London rushed to arms against Prince Charles Edward and the Highlanders, the gentlemen of the Inns of Court forsaking their studies and briefs for the nonce, formed themselves into "a little army" under Chief Justice Willes. We may be quite certain that that sturdy anti-Jacobite, Mr. Henry Fielding, found time to spare from editing "The True Patriot" to take his place in the lawyer's corps which was to have mounted guard at St. James's had King George II. joined his Guards in their famous march to Finchley. But the clans turned back at Derby, the Hanoverian dynasty was saved, and at Culloden next year the Stuart cause fell for ever.

The "horrid and unnatural rebellion" being suppressed, the Bar of the northern circuit was off on horseback and in postchaise for Carlisle and York where in violation of the Act of Union—crowds of prisoners were awaiting trial for having been "out in the Forty-Five." True bills were returned against two hundred and sixty-two persons, and these were defended —many of them gratuitously—by the Bar, and

with such success that upwards of sixty-three were acquitted. The defending counsel of the home circuit do not seem to have been equally happy in their efforts on behalf of the Jacobite prisoners tried at the Surrey Sessions held at the Fish Street Hill Court House, Southwark, for out of seventy-one individuals indicted only fourteen were acquitted.

By a species of irony the prosecution of the rebel lords—Balmerino, Cromarty, Kilmarnock and Lovat—devolved on Sir William Murray, himself the member of a family devoted to the Stuart legend. "I heard him with pleasure though it was against me," said Lovat with reference to the Solicitor-General, and further added: "I wish that his being born in the north may not hinder him from the preferment that his merit and learning deserve." Lord Lovat's aspirations in this case were fulfilled, his illustrious countryman ultimately attaining to the dignities of Lord Chief Justice of England and Earl of Mansfield.

The militant Lord Chief Justice Willes, who raised the Bar against the young Chevalier, did not gain much from the government by this display of loyal zeal. His hopes of the Chancellorship were disappointed, and he is

said to have died in consequence of a broken heart. Of a naturally unconciliatory disposition, he became latterly quarrelsome and overbearing, and in 1755 took a step which spread consternation among a considerable section of the Bar. This was nothing less than a project for abolishing the exclusive right of the serjeants to practice in the Court of Common Pleas—a privilege which belonged to them as the representatives of the original Bar of the country. But the hour of the serjeants' monopoly had not come by nearly a century, and they continued to hold their own in spite of the effort of the chief of their court to displace them.

## CHAPTER IV

THE Inns of Court had long suffered from the absence of a common rule with regard to the call of students to the bar. To remedy this defect, the Benchers of the four Societies in 1762, adopted a general regulation which set forth that before a gentleman could be "called" he must be twenty-one years of age, have kept twelve terms, and been five years a member of one of the houses. Graduates of the Universities were let off with three years membership and the keeping of twelve terms. Still there was no mention of examinations of any sort, as a guarantee of competency. In fact, a man might have arrived at the rank and dignity of a barrister-at-law who was utterly ignorant of even the general principles of his profession, but the possibility of such a scandal does not seem to have come home to those responsible for the government of the Inns of

Court. Eighteenth century England was not wanting in learned men, but their stores of erudition were the outcome of individual exertion and that alone. The Universities, sunk in port and undying prejudices, had almost ceased to teach. "Examinations in my time," remarks Lord Eldon, "were a farce." A farce, indeed, where the meaning of two or three Greek and Latin words and a superficial explanation of a common historical fact were regarded as sufficient for the B.A. degree. Secondary education languished in Edward VI.'s Grammar Schools, where the curriculum was confined to a minimum of classical and mathematical knowledge. Recruited as the Inns of Court were from these institutions their governing faculties, perhaps, could not be expected to rise superior to the ideas of their generation.

It is pleasant to turn from this picture of intellectual destitution to the contemplation of individual effort and what it achieved for contemporary legal scholarship. It may be remarked, parenthetically, that in those days few men went to the bar for the sake of the social distinction it confers. By far the greater majority who "took to the law" did so with

the intention of practising it, and therefore studied accordingly. There were, of course, some exceptions even among those who afterwards rose to fame. Thus, so great a luminary as Lord Mansfield does not seem to have done much more during his student days to acquire legal knowledge than regularly attend the meetings of a lawyers' debating society. Even this slight means of instruction was not always adopted by those who kept terms merely to please relatives or friends. "I arrived in London in January, 1787," writes Theobald Wolfe Tone, the Irish patriot, in his Autobiography, "and immediately entered my name as a student-at-law on the books of the Middle Temple; but this, I may say was all the progress I ever made in that profession. I had no great affection for study in general, but that of the law I especially disliked." After two years of term keeping and dining in hall, he confessed to knowing as much about law as of "necromancy"! This as well as the statement that he was "one of the most ignorant barristers in the four Courts," (Dublin), is somewhat inconsistent with the fact that after returning to Ireland he "commenced bachelor of laws" at Trinity College,

and on his first circuit pretty nearly cleared his expenses.

On the other hand, the really studious were very studious as the following instances abundantly prove. Sir John Eardley Wilmot —afterwards Chief Justice of the Common Pleas—"prosecuted his legal studies with diligence." Thurlow was to be found "close at study in the morning in the Temple." Sir William Jones, the great oriental scholar, read Blackstone "most attentively," besides "opening two commonplace books, the one in law and the other in oratory." Lord Erskine on quitting the army for the bar "exhibited much diligence" in acquiring the minutiæ of his new profession "in the chambers of Mr. Buller, one of the most eminent special pleaders of the day." Sir Samuel Romilly when at Gray's Inn studied under Mr. Spranger from ten to three and again from five till nine, except on the days when he attended the courts to observe the procedure. Lord Eldon's dictum on the subject of law-study that "one must live like a hermit and drudge like a horse," was amply borne out in the lives of his contemporaries.

Despite the blight of official neglect which

hung over professional studies, the science of jurisprudence at this period made distinct progress. The good sense of Lord Mansfield rid the courts of "much pedantry and uncouth jargon," while his constructive genius laid the foundation of our present magnificent system of commercial law. The press teemed with clearly expressed text-books, these latter in great part due to the publication of Blackstone's "Commentaries" (1765-8 ), which revolutionized the mode of treating legal subjects. Such arid treatises as Wood's "Institutes" and Finch's "Law," went completely out of use as students' manuals, and even laymen turned with pleasure to the elegant diction and clear exposition of Blackstone's immortal work.

The public teaching of law, in abeyance at the Inns of Court, was seriously taken up about this time at Oxford where Mr. Charles Viner amply endowed a professorship of English law. Hitherto lectures had only been given on the Roman Civil law in use in the Ecclesiastical and Admiralty Courts and at "Doctors Commons." Sir William Blackstone was the first occupant of the new chair, and from his discourses were evolved the splendid commentaries on the Laws of England.

The example of Mr. Viner was to a certain extent followed by Mr. Charles Tancred of Whixley, Yorkshire, one of the Benchers of Lincoln's Inn, who bequeathed to that Society a sum of money sufficient to found four scholarships of £50 each, which was to be paid to as many students both during their term-keeping and for three years after their call to the bar. In February, 1763, Mr. Edward Reeve one of the four first "Tancred scholars" pronounced "an elegant Latin speech" in the hall of the Inn in commemoration of the munificence of the pious founder.

"Over-crowding," which is generally regarded as the bane of most professions at the present day, was also felt to be an obstacle to success—at least as far as the law was concerned—in the latter part of the eighteenth century. "As I meditated trying my fortune in Westminster Hall," remarked Boswell, "our conversation turned on the profession of the law in England." *Johnson:* "You must not indulge too sanguine hopes should you be called to our bar. I was told by a very sensible lawyer that there are a great many chances against any man's success in the profession of the law; the candidates are so numerous, and those who

get large practice so few. He said it was by no means true that a man of good parts and application is sure of having business, though he indeed allowed that, if such a man could but appear in a few causes, his merit would be known and he would get forward; but that the great risk was that a man might pass half a life-time in the courts and never have an opportunity of showing his abilities."

It may be said without fear of contradiction that some of the greatest lights of the law have experienced the most difficulty in "getting on." Charles Pratt, Lord Camden—the same who pronounced against the legality of general warrants in the Wilkes case—was so long without practice after being called to the bar, that he seriously thought of abandoning the profession and seeking a small but honourable independence in the Church. Happily, for his fame as a lawyer, he resolved to give the western circuit one last trial. Here his friend, Robert Henley, subsequently Lord Chancellor Northington, who utterly scoffed at "this canting business of turning parson," got him retained in a good case, and from that day forward Pratt never lacked briefs. Nearer our own time, and in it, similar struggles against

"the slings and arrows of outrageous fortune" have marked the early careers of such eminent jurists as Lord Langdale, Master of the Rolls, and the late Lord Chancellor Herschel.*

The principle of religious toleration which had been slowly gaining ground in England during the course of the eighteenth century, found some of its firmest supporters among the practitioners of the law. The heavy penal statutes which pressed on the small and almost forgotten body of Catholics in England were the cause of many prosecutions for "recusancy" in spite of the humane efforts of such judges as Lord Mansfield to discountenance the proceedings. The knowledge of this, and perhaps also the fact that a considerable number of Catholics resided in the Inns of Court either

* Henley's mode of getting his friend included in the case was characteristic. When his client's attorney called on him to arrange the particulars of the cause, he asked him if he had retained Pratt. "Pratt! Pratt!" said the attorney, "who is Mr. Pratt?" "Who is Mr. Pratt, sir?" said Henley, gravely. "The question shows you to be a country attorney or you should know better. Go to him directly and engage him, as I would not have a man of his abilities against me on any consideration." Mr. Pratt was at once retained, and, Henley being taken ill on the day of the trial, led the case on his side and won the day.

as conveyancers, special pleaders, or private individuals, may have been one of the reasons why the Gordon rioters in 1780 directed so large a part of their fury against these Institutions. The members, both barristers and students, hastened to meet force by force, and, so long as the riots continued, kept armed watch in the halls of their respective Societies. At the Inner Temple, the mob forced the gate, and would no doubt have plundered and burnt the place as Wat Tyler's followers did four centuries before, had not a sergeant of the Guards, who acted as military instructor to the law-gentlemen, called out to the armed Templars: "Take care no gentleman fires from behind!" The rioters, fearing that some ambush had been prepared for them, took to their heels and never again molested this sanctuary of the law. In and around Gray's Inn, a similar armed watch kept the 'No Popery' people at bay, and many years later Sir Samuel Romilly used to point out the gate where, musket in hand, he had stood sentry during some of the worst nights of the riots. The Lincoln's Inn students, it seems—or as another account says those of the Temple—would have joined the military in repressing

the riots, but were told by one of the officers in command that he did not wish "to see his own men shot!"

The year that witnessed the outbreak of the Gordon riots is also remarkable for the revival of "readings" in at least one of the Inns of Court. A series of lectures was delivered at Gray's Inn by Mr. Danby Pickering, and sixteen years later this example was followed by Lincoln's Inn where Michal Nolan, Esq. read a course of law to the students. In 1798 Mr., afterwards Sir James Mackintosh, lectured at the same Inn on "the Law of Nature and of Nations." Owing to the publication of his "Vindiciæ Galliæ" in reply to Burke's work on the French Revolution, Mackintosh found some difficulty in obtaining leave of the Benchers to read, but the result fully justified the initial difficulties of the undertaking. The hall of the Inn was crowded daily during the course of the lectures, not only with barristers and law students but also authors, members of parliament and others who listened with close attention while the great jurist laid bare the erroneous doctrines of Vattel and Rousseau.

Among the provisions of the Relief Act,

passed in favour of the Catholics in 1791, was one throwing open the professions of law and medicine to the members of that communion. The first Catholic gentleman to be called to the bar in consequence of the relaxation of the penal statutes, was Mr. Charles Butler, who was admitted a counsellor the same year that the act above mentioned was passed. He had long been a member of Lincoln's Inn, and is well known as the author of several learned publications including an able treatise on Fearne's "Contingent Remainders." When the bar had been finally closed against "Papists" at the era of the Revolution (1688), not a few Catholics took to conveyancing as a profession, and several of them arrived at great eminence in that department. Among these may be mentioned James Booth "acknowledged to be the father of the modern practice of conveyancing," John Maire and Mathew Duane, the latter the preceptor of Lord Eldon. According to the late Lord Bramwell, these Catholic members of the Inns of Court were the originators of "special pleading," an important branch of legal business which has in more recent times attracted the attention of such eminent counsel as Sir

William Bovill, Sir John Quain and Sir Henry Hawkins (Lord Brampton). *

At the close of the eighteenth century, the profession of the law no longer clustered as of old round the ancient precincts of the Inns of Court. Year after year saw London extending its boundries northword and westward from Holborn towards the breezy heights of Hampstead, which soon became a pleasant region of villas. Building operations round Lincoln's Inn have already been referred to, and when the district known as Holborn Fields was acquired for the same purpose in 1684, the gentlemen of Gray's Inn were filled with alarm for their rural surroundings. About a hundred of the boldest among them attacked the workmen and drove them off the ground, but in spite of this and similar opposition, house erection went steadily forward and soon the leading members of the Bar were glad to leave the close and dingy purlieus of Holborn and the Temple for the fine streets and squares of

* See article on Lord Bramwell in "Temple Bar," Aug. 1896. For the sake of the uninitiated it may be explained that a Special Pleader is a member of an Inn of Court, generally not called to the bar, who devotes himself to the drawing of pleadings, and attending at judges' chambers.

the new suburbs. At Duke St., Westminster, Judge Jeffreys gave noisy dinners to troops of boon companions, whom he kept in roars of laughter by his admirable mimicries of well known members of the Bench and Bar. Bedford Row—long since the business habitation of "respectable attornies"—was fashionable before the Revolution. Here on March 5, 1710, died Chief Justice Holt, the great constitutional lawyer; Chief Justice Willes who called the Bar to arms in the "Forty-Five," died at his house in the adjoining Bloomsbury Square, where Lord Mansfield's fine mansion with its priceless books and manuscripts was destroyed by the Gordon rioters. Lord Hardwick and Lord Thurlow had their town houses in Ormond Street, and at his residence in Bedford Square Lord Eldon entertained Caroline, Princess of Wales, George IV.'s unhapy consort.

As far back as Charles II.'s time, it had become fashionable for the opulent to have residences out of town, and the Judges and leading barristers were not slow in following the pleasant mode. Francis North, Lord Guildford, took a villa at Hampstead "for the advantage of better air." Chief Justice Pemberton lived in a rural

mansion at Highgate. Years later, Charles York—who died miserably two days after he had accepted the Great Seal, January, 1770—used to entertain his friends weekly in the same quarter. It was on Hampstead Heath, near to which they both lived, that Lord Loughborough met Erskine one evening during the stormy epoch of the State trials in 1792, and said "Erskine, you must not take Paine's brief," receiving for answer: "But I have been retained and will take it by God."

In spite of the rush to the suburbs, the Temple continued to be the residential as well as the business quarter of the lawyers. Not a few also outside the profession sought in that "home of ancient peace" the repose and quiet not to be found in the loud roaring neighbourhood of Fleet Street and the Strand. Charles Lamb, much of whose boyhood was passed in the old world garden of the place, has left us his undying impressions of the home of his childhood in the fascinating description of "the Old Benchers of the Inner Temple." At 2 Brick Court lived Oliver Goldsmith in Chambers, "up two pair of stairs," and furnished with "mahogany sofas, card tables, book-cases, curtains and Wilton carpets." In these lavishly

fitted apartments the spendthrift poet would play uproarious games with his young friends to the entire satisfaction of the juveniles and the utter discomfiture of poor Mr. Blackstone who was labouring at his "Commentaries" in the chambers beneath. It was in the Inner Temple Lane that Boswell encountered Johnson rushing from his rooms in dishabille, "eager to show himself as a man of gallantry" to Madame de Boufflers who had come to pay the sage a visit. At 5 King's Bench Walk, Murray, Lord Mansfield, entertained Pope, and on occasions left his law to "drink champagne with the wits;" it was here too that his clerk heard one of his clients of the gentler sex swear so dreadfully that he concluded "she must be a woman of quality!" Such incidents as these, though trivial in their nature, go to make up the romance of history, and when associated with a locality already historic and venerable, render its charms well-nigh irresistible. No wonder the Temple is a spot dear to historic fancy, for who can tread the labyrinths of its old time passages, note the stillness of its cloisters or survey the Gothic grandeur of its hall, without instinctively feeling that the place is "almost holy ground?".

## CHAPTER V

THE throwing open of the bar to Catholics was nowhere more appreciated than in Ireland "where the title of Counsellor marked a distinct privilege of the Protestant ascendency, was a grade in itself, a dignity guarded by the laws of the land and an assurance of personal gentility," ("Centenary Life of Daniel O'Connell.") Owing to the rule which prevailed till a few years ago compelling Irish law students to keep a certain number of terms in London prior to "call" at the King's Inn, Dublin, the English Inns of Court became in a sense identified with some of the greatest names in Ireland's latter day history.*

* The rule by which students for the Irish bar were compelled to keep a portion of their terms at one of the Inns of Court in London arose out of some old provisions for civilizing "the wild Irish" by bringing them into contact with the superior refinement of the metropolis. It was, however, a serious addition to the Irish law-students' expenses and was abolished about twelve years ago at the instance of Sir Edward Carson, K.C., M.P.

O'Connell entered Lincoln's Inn as a student in 1794, and while keeping his terms there lived first in Coventry Street and afterwards at Chiswick, meanwhile reading hard such legal works as Espinasse on trials of Nisi Prius, and resolving "never to be satisfied with a subordinate situation in my profession." At the same Inn studied his great henchman, Richard Lalor Sheil, widely known for his oratory and political talents, and as an author for his racy "Sketches of the Irish Bar." The dramatist, Arthur Murphy, was a member of the same Inn but belonged to an older generation. Judge Keogh, who played a conspicuous part in the stormy world of Irish politics in the fifties and sixties of the last century, also kept terms at Lincoln's Inn, which seems to have been a favourite with Hibernian students.

The Temple, too, is rich in memories of such illustrious Irishmen as John Philpot Curran, Henry Flood, Henry Grattan, William Molyneux, and Lord Cloncurry. Tom Moore was entered at the Middle Temple in 1795, some four years before he actually began term-keeping there. The poet entered upon the legal career to please his fond parents who

had set their hearts on their son "becoming a counsellor." But the Irish Anacreon could no more be a lawyer than Petrarch, Boccacio or Ariosto before him, and the sweet warbler soon hied away to charm the world of rank and fashion with those tender melodies which are enshrined for ever in the hearts of his countrymen.

The years that immediately came after 1792, rank as some of the most illustrious in the whole annals of the English Bar. The constitutional movement for Parliamentary reform which had commenced under the auspices of William Pitt in 1785 was checked on its march by the outbreak of the French Revolution. Its more timid supporters took alarm; the slightest change in the constitution was denounced as the first step towards spoliation and anarchy. The inevitable reaction set in. Ardent champions of reform and political renovation began to look to the young republic as their model, and systematic correspondence took place with the leaders of the revolution in France. At a banquet at the Percy Coffee House in November, 1792, Mr. John Frost, an attorney, boldly said in the course of an after-dinner speech: "I am for equality and no

king," for which remark he was committed for trial. Later on, Mr. Walker, a gentleman of Lancaster, was indicted with several other persons for conspiring to overthrow the government. But none of the state trials at this period aroused so much attention as the case of Horne Tooke, Thelwall and Hardy, who in November, 1794, were tried at the Old Baily for sedition. The Court was so hemmed in by crowds, that as one spectator put it, it seemed as if all England was compressed within the narrow compass of Newgate Street.

In all these instances the objects of prosecution were defended by Erskine, the heaven-born advocate, if ever barrister deserved that crowning title. Originally an officer in the army, he had quitted the sword for the robe, and in five years from his call at Lincoln's Inn received the honour of a silk gown. His eloquence was of that transcendent kind which seizes on an audience and holds it captive, while torrents of burning words alternately aroused its resentment, its pity, or its mirth. In glowing language the champion of the popular cause portrayed his country struggling in the throes of ministerial proscription, beset on all sides with spies and

informers, and threatened with the loss of its ancient liberties. A verdict of "Not guilty" in every case marked the immediate success of these splendid orations which must ever rank among the sublimest examples of forensic eloquence ever heard at the English bar.

But the sweeping elocution and argumentative addresses of the illustrious advocate were not uniformly successful. At the trial of Lord Thanet, Mr, Ferguson, a barrister, and some others for attempting to rescue Arthur O'Connor after his acquittal for high treason but before he was discharged by the court, Erskine's defence was met by the bold and skilful advocacy of Mr. Law (Lord Ellenborough), and his clients were convicted. In the affair of Tom Paine, the Crown also secured a verdict, but a very Daniel could not have saved such a defendant as the author of the "Rights of Man."

Both the Prince and Princess of Wales have their Attorney and Solicitor General and these when in court take their places within the bar. For the part he played in the trials for treason at this period, Erskine was deprived by the ministry of the first of these posts, but the Prince (afterwards George IV.) was so far from

sharing in this act of revenge, that at the first opportunity he revived in favour of the popular Counsel the long dormant office of Chancellor to his household, and this dignity Erskine retained till his elevation to the woolsack on the death of Pitt in 1806.

Barristers whose talents were enlisted against the Court or government, did not always receive such generous treatment as that recorded above. At the conclusion of the trial of Queen Caroline for alleged misconduct (1820), both Brougham and Denman her attorney and solicitor general, were deprived of their silk gowns and relegated once more to the ranks of the junior Bar. It must in fairness be said that the Court had some cause to be incensed against certain of the profession for their conduct during the trial. Some of the remarks made by Counsel with reference to the royal dukes were most intemperate and resembled more the wild, reckless language of mob orators than the dignified address of gentlemen of the long robe. It certainly does the Duke of Clarence the highest credit, that though especially singled out for attack, he not only refused to take any notice of the onslaughts at the time, but even when he succeeded to the

throne as William IV. assented to the promotion of some of those most hostile to him during the progress of the historic trial. Not without reason did the once popular ballad sing of such a prince—"The king is a true British sailor."

However disposed to defend liberty of speech and freedom of political action when these were unduly menaced during periods of public excitement, the Bar showed no willingness to sympathize, even theoretically, with the aims and objects of the French Revolution. At the first rumour of invasion by the armies of the Republic, the members of the Inns of Court came forward as a body to take their stand with the host of volunteers which sprang to arms for the defence of king and country. The two legal divisions of this huge citizen army were known respectively as "The Bloomsbury and Inns of Court Association," and the "Temple Corps," both under the command of Erskine, whose military experience, as a captain in the line gave him some claim to the rank of Colonel. Many amusing stories are told of the lawyer volunteers—how Erskine used to read the word of command from the back of a paper like a brief, and how Sir John Scott and Law (Lord Ellenborough) had to be dismissed from the

awkward squad for sheer inability to learn the "goose step" or the proper handling of musket and bayonet. A wag—it must have been Tom Moore—said that when the word "charge" was given, every member of the Corps produced a note-book and forthwith wrote down six and eightpence! In spite of the blunders and witticisms, the forensic battalions soon became effective, and they were among the number of those that attracted the favourable notice of George III. and his staff at the great review in Hyde Park on June the sixth, 1799. It was probably on this occasion that the king gave to the bar-muster the sobriquet of the "Devil's Own"—a nickname which continues to be borne by their present day representatives the "Inns of Court Rifle Volunteers," embodied in 1859.

The first two decades of the nineteenth century present but few features of interest with reference to the subject of these pages. A point of legal etiquette was settled in 1814 which, however fit and proper in itself, marked yet another step in the decadence of the serjeants. By an order in Council of 1623, the Attorney and Solicitor General had been given precedence over all the King's serjeants except

the "two ancientest;" now on Mr. Shepherd, the King's Ancient Serjeant, being created Solicitor-General, he gave up his precedence in favour of Sir William Garrow, the Attorney-General. The Privy Council, with a view, perhaps, of clinching this arrangement for ever, issued an order placing the two law officers of the Crown over the entire Bar.

Till the end of the eighteenth century, a barrister who had risen to the rank of Attorney-General had an almost indefeasible claim to the crowning honour of the Chancellorship, but from this period it became by no means unusual for "Mr. Attorney" or "Mr. Solicitor" to rest content with a *puisne* judgeship or a barony of the Exchequer—a circumstance no doubt brought about by the fact that the Great Seal having passed into Lord Eldon's custody did not fall vacant for twenty years, (1807-27).

The establishment of serious examinations at Oxford and Cambridge led to no corresponding result at the Inns of Court, where dining and wining still continued to be the royal and only road to the bar. Robert Surtees, the antiquarian, who kept some terms at the Middle Temple, 1800-2, used to humourously say that he entered the Society "on account of their

having a good dinner for a very reasonable sum with a bottle of good old *Domus* wine among each four, given gratuitously by the benchers." His course of reading, however, denoted more serious intentions, and may be given as fairly representative of the law students' legal training at this period. He first studied in the Chambers of Mr., subsequently Judge, Richardson, an eminent special pleader, but afterwards placed himself under a conveyancer "of great eminence, the late Mr. Wilkins." In addition to this, Mr. Surtees made a complete index of manuscript cases and opinions, besides copying many of these *in extenso* in a quarto volume. On abandoning the idea of a legal career, he sold this valuable collection to Mr. Francis Newburn of Darlington. (*Memoir* by G. Taylor: Surtees Society Publications, I. 1852).

The philanthropic efforts which were made about this time in Parliament to obtain some mitigation of the criminal code were mainly the action of such distinguished members of the Bar as Sir Samuel Romilly, and Henry, afterwards Lord Brougham. In April, 1787, Mr. Minchin, M.P., had drawn the attention of the House of Commons to the state of the penal code which at that time contained no fewer than one

hundred and sixty offences punishable with death! The list comprised such matters as theft from the person to the value of one shilling, or from a shop to the value of five; cutting down trees and hop binds; sending threatening letters; breaking down the banks of fish ponds and the like. The result of such legal severity was that few persons would prosecute, and still fewer juries convict, so that many offenders deserving of some punishment, though not death, escaped altogether. The close attention demanded by a large Chancery practice could not prevent the noble and self-sacrificing Romilly from agitating in season and out of it for thorough and wide reaching reforms. Though little was done in his life-time to ameliorate the state of the law in this respect, the agitation on the subject had made the problem one that called for immediate solution.

The voice of Romilly would have been but that of one crying in the wilderness, had not the gradual diffusion of the writings of Jeremy Bentham at this period taught the ruling classes of the nation to consult more and more in things political, "the greatest happiness of the greatest number." Bentham was a barrister of Lincoln's Inn, but the practice of

the law, as it stood, ill accorded with the tastes of one who was before all else a philosophic jurist. To him more than to any other man must be attributed the application—as far as this country is concerned—of Beccaria's principle that the certainty of punishment rather than the severity of it, is the real prevention of crime. This and Bentham's enlightened notions as to the treatment of offenders with a view to their reformation and the benefit of the Community, at length came to be recognised and acted upon. By 1837 the number of capital offences had been reduced to nine; model jails were to be found in most parts of the country, and the question of juvenile prisoners was about to be made the subject of legislative enactment.

These beneficial results have been dwelt on at some length because they in great measure emanated from the labours and writings of the two distinguished barristers referred to above, and may therefore be legitimately considered as coming within the scope of the present narrative. But of all the reforms that have made this epoch illustrious in the annals of social progress, few are of greater moment than that which abolished the long "settled

rule at common law" debarring persons accused of felony from making full defence by counsel.

On the sixth of April, 1824, Mr. George Lamb, M.P. presented to the House of Commons a petition from several jurymen "in the habit of serving on juries at the Old Bailey." The petitioners humbly submitted "to the serious consideration of the House the expediency of allowing every accused person the full benefit of counsel as in the case of misdemeanour, and according to the practice of the Civil Courts."

It seems scarcely possible for us at the present day to realize that for centuries no one tried for felony in this country might have counsel to address the jury. By indulgence he was allowed counsel to argue points of law and cross-examine witnesses, but beyond this the defence of the prisoner depended on himself! This scandalous practice was defended in text books on the ground that the judge was "counsel for the prisoner"—an absurd statement which the Bench itself could not publicly maintain. Thus, Mr. Baron Garrow in his charge to the grand-jury at the Exeter Assizes on August 16th, 1824, remarked that "it was

impossible for judges to do more than shield persons from undue prejudice; they could not suggest the course of defence prisoners ought to pursue." In the House of Commons, Mr. Scarlett (Lord Abinger), one of the most eminent advocates the Bar of this country has ever produced, defended the subject of Mr. Lamb's petition in a speech of great eloquence and vigour. "I have myself often seen persons I thought innocent convicted," remarked the future Chief Baron, "and the guilty escape for want of some acute and intelligent Counsel to show the bearings of the different circumstances on the conduct and situation of the prisoner." Mr., afterwards, Lord Brougham, also spoke warmly in defence of the motion.

The ancient practice of the Courts with regard to Counsel in the case of offences, seems to have been not only contradictory, but to have rested on the bad assumption that accusation and guilt are synonymous terms. It was contradictory in as much as it allowed the privilege of Counsel in cases of treason and misdemeanour, but witheld it in those of felony. Thus, persons levying war against the King or compassing his death, were entitled to counsel (by the Act of 1695-6); also in the case

of seditious riot. But if the accused remained with the mob an hour after proclamation to disperse, this was felony and he could not have counsel! Again, a receiver of stolen goods who employed a young girl to rob her master might be tried for misdemeanour and of course have counsel, but the girl would have been (if arrested) indicted for felony and have had to defend herself as best she could!

The act of 1695-6, allowing counsel in cases of treason, though a just and admirable measure, was in reality far less necessary than the one permitting the same means of defence to felons. In the first place, high treason, even in those days of active Jacobitism, was of comparatively rare occurrence, while felons by the score awaited trial at almost every assizes. Moreover, the persons likely to be accused of treason were for the most part of superior education, well skilled in affairs and accustomed to public speaking. On the other hand the felon was usually a poor ignorant creature quite unable, as a rule, to put together an intelligent or even intelligible address. He appeared in court squalid and depressed by months of confinement, appalled by the terrors of his situation and abashed by

the presence of the well-to-do. Till the reign of Queen Anne, a felon's witnesses were not examined upon oath, but it as often as not happened that these were too poor to undertake the journey to the distant assize town or maintain themselves when there. It is true that in nearly every case, some friendly barrister would undertake to cross-examine the witnesses for the prosecution and indirectly by his questions work in some arguments for the accused, but the real crux of the defence—the address to the jury—rested with the unfortunate prisoner.

Just as it took seven sessions of parliament to pass the Treason Act in the reign of William III., so it required a long struggle to place the bill allowing counsel, in cases of felony, on the list of statutes. The measure was opposed at the outset by the bulk of the Judges, some of whom, like Sir John Singleton Copley, feared the "conflict of talent" that would arise in criminal cases and so enable the guilty to escape. Within the House the opposition was nearly as great, but the majority of the arguments put forward were of the most childish description. It was actually said that a change in the law "would be such an expense to the

prisoner"—"as if," observed Sidney Smith sarcastically, "anything was so expensive as being hanged!* Others took their stand on the opinion of Lord Chancellor Nottingham who nearly two centuries before had solemnly declared with reference to this very subject, that the reason why no counsel was allowed in cases of felony was because the prisoner's guilt being always so clear no person could gainsay it!

Fortunately for its success the bill found an able and strenuous promoter in Mr. William Ewart, the member for Liverpool, and one of the most distinguished of those who sat at the feet of Bentham. The measure which passed into law in August 1836 allowed every one accused of felony to make "full and complete defence" by counsel learned in the law and subject to certain conditions. These conditions are chiefly that in all prosecutions, counsel for the Crown shall have the "right to the last word," if he be the attorney or solicitor-general;

* In his able Essay on Counsel in cases of Felony ("Edinburgh Review," Dec., 1826) Sidney Smith brings in the following amusing rejoinder supposed to be made by the Ordinary of Newgate to a condemned prisoner: "you are going to be hanged to-morrow, it is true; but consider what you have saved!"

but in other cases only if the prisoner calls witnesses to *fact*. If these be only to *character*, then his counsel is entitled to address the jury last.

The passing of this important act opened up to the ambitious barrister another avenue to forensic fame. It directed, so to speak, the public gaze towards the criminal courts as to a new and almost unknown sphere. The sight of a talented advocate pleading for the life or liberty of a fellow subject supplied the "one touch of nature" that was required to invest these tribunals with an all-absorbing interest, and many a barrister who has entered upon a defence a practically unknown man has left the court with his fortune made. Though it was once the fashion to sneer at the members of the Old Bailey Bar as "notoriously the most ignorant men in their profession," there can be no doubt that to be a first class criminal lawyer —at least on the prisoner's side—demands as much ability in its way as to be a leader of the Chancery or Nisi Prius bar, with perhaps a greater amount of knowledge of human nature. If the "civil side" of the courts have had their Bethells, Lushes, Coleridges, and Daveys, the criminal tribunals can at least show names as

eminent as these. To begin with the older generation the list may be started with Mr. Serjeant Adolphus, the historian of the reign of George III., a learned if somewhat ponderous pleader. Charles Philips (1788-1859), the biographer of Curran and friend of O'Connell brought to the English Bar from that of Ireland a splendour of eloquence which is one of the classic glories of our forensic history. His greatest triumph—considered as a piece of oratory—was perhaps his defence of Courvoisier, the murderer of Lord William Russell, at the Old Bailey in June, 1840. The sensation caused by this brilliant piece of rhetoric was tremendous, and it is very far from being forgotten even now. If any "literary character" with a biographical turn, is on the look out for a suitable subject for a "Life and Times," he (or she) might do worse than try their hand on a memoir of this highly gifted Irish barrister.

Contemporary with Philips, though in practice long after him, were Serjeants Ballantine, Parry and Shee. The two first surpassed in power of cross-examination, the last in masterly grasp of details and vigour of address. Mr. Serjeant Shee—whose greatest case in the criminal courts was his powerful if unavailing defence of

Dr. Palmer, the poisoner, at the Old Bailey in 1856—is further distiguished as being the first Catholic barrister to be raised to the bench since the time of James II. After him Sir Henry Hawkins, the late highly esteemed Lord Brampton, carried on the great traditions of his forensic predecessors, and it was his cross-examination of the "Claimant" in the Tichborne case that mainly led to the collapse of that colossal imposture. Cross-examination as a means of unmasking fraud, again came prominently forward in the Parnell Commission trial of 1888-9, when Sir Charles Russell's handling of Pigott exposed one of the most daring forgeries of recent times. Sir Charles Russell, who dominated the Bar for so many years will live in history as one of the greatest advocates of his own or any age.*

* At the unveiling of the marble statue of Lord Russell of Killowen in the great central hall of the Royal Courts of Justice, on January 11th, 1905, the American Ambassador, Mr. Choate said: "In the proud position that he occupied so long as the greatest advocate of his time the world over, Sir Charles was an inspiring influence to his brethren everywhere, and as a supreme master of the dangerous art of cross-examination, so fatal when in feeble hands, so triumphant for truth when happily conducted, he was not only a peer in his own time, but his superior could not be found in all the annals of forensic history."

With full scope in the Criminal Courts, accorded it by the Act of 1836, the Bar may be said to have reached the final haven of its destinies. Whatever changes time may bring forth in its customs, organic constitution or procedure, little if anything more can be done to widen the field of its activity, which now embraces every department of legal pleading.

One circumstance in connection with this subject has come into prominence of late years which may be briefly referred to here. By a custom, which did not, it seems, begin to attain the force of an unwritten law till about the middle of the eighteenth century, no barrister may presume—except in urgent criminal cases—to act for a client save through the medium of a solicitor from whom he receives his instructions. The practice which has been frequently made the subject of criticism, appears to have arisen out of the circumstances of the circuit system. The various causes for trial at the several assize towns naturally come first into the hands of attorneys, and from these the Counsel of the circuit receive their briefs, since the Bar alone has the sole right of audience in the

superior courts. As far back as October, 1851, a meeting of lawyers was held in London to consider the advisability of allowing solicitors to plead on an equal footing with the Bar, and in 1896 this question of the "fusion" of both branches of the profession again came up for discussion in the professional and general press. It seems, however, to make for the best interests of each, that the respective callings of barrister and solicitor should remain distinct. The advocate who does not come into immediate contact with the client has, as a rule, no personal knowledge of his merits or demerits, and can in consequence act independently of these considerations. The certain knowledge that the person whose cause he represented was actually guilty or in the wrong, might well be conceived to prove a serious hindrance to any line of defence or pleading besides placing the counsel himself in a very invidious position. The barrister who "faces a British Jury" does so in the light of a third person, and the arguments put forward by him derive a strength from this circumstance which would be wholly wanting under other and more partisan-like conditions.

The only other event of some importance in the history of the Inns of Court during this the age of reform, was the admission of Jews to the bar. In 1833, Mr., subsequently Sir Francis, Goldsmid, was "called" at Lincoln's Inn, and after some years of successful practice he received a silk gown and a baronetcy. His more eminent co-religionist, Sir George Jessel, was "called" at the same inn in 1847, and in 1873 succeeded Lord Romilly as Master of the Rolls, a post he filled with distinguished ability till his death in 1883. There is a marble bust erected to his memory in the Law Courts.

## CHAPTER VI

IT was, we believe, the late Sir Frederick Pollock who on one occasion humourously remarked that the Bar "went into mourning for Queen Anne and had remained in mourning ever since." If her sister Mary be substituted for the Queen "who sometimes counsel took and sometimes tea," the saying is not far from the truth. The sombre robes of the English Bar fitly symbolize the dignity of the law and the gravity of the profession, and to them—in conjunction with the "spotless ermine" of the Judges must be attributed no small share of the awe which helps to make our courts sacrosanct in the eyes of the public. Beginning with the serjeants-at-law, they had as early as the thirteenth century, many "fees and robes" from the king's "Great Wardrobe," and what these robes were like we may infer from two lines in Langland's "Vision of Piers Plowman:"

"Shall no serjeant for his service wear no silk hood
Nor pelure on his cloak for pleading at the bar?"

The Sutherland manuscript has an illuminated picture of a serjeant clad in scarlet with open sleeves faced with blue and adorned with small bars; a white furred hood on his shoulder and on his head the characteristic badge of his order —the white lawn or linen coif. The coif was not, as has been erroneously supposed, adopted by ecclesiastical pleaders to cover the tonsure after clerics were forbidden to practise in the lay courts, being as much the peculiar symbol of the serjeants as the helmet is of the soldier or the biretta of the priest. At the commencement of the seventeenth century, it had come to be almost hidden by a black cap, and when wigs came into vogue after the accession of Charles II., a small aperture was left on the top through which appeared a round patch of white lawn partially covered with black.

In Dugdale's time, the robes of the serjeants were three in colour, i.e., murry or dark red, black furred with white, and scarlet. The fashion, however, was always changing. When James the First died, robes of violet or black were adopted, and a document in the State Paper Office of the date of this year (1625), describes

at some length "What roabes and apparell the judges are to wear, and how the Sergeants-at-law are to weare their roabes and when." Ten years later the Judges and serjeants came to an understanding on the subject of official costume, the dress of the latter being henceforward a gown of black cloth for term-time on ordinary occasions; violet cloth for Court or holidays; scarlet when going in procession to St. Paul's or when dining in state at the Guildhall or attending at the House of Lords during the Sovereign's presence; black silk for trials at Nisi Prius. When acting as Commissioners of assize, the serjeants were entitled to wear scarlet, but most of them, very much no doubt to the disgust of the prisoners, appeared on these occasions in black silk.

Red robes on the part of the Judges of course give an additional air of importance to the court, and the criminal classes with that love of the melo-dramatic which seems to be one of their marked characteristics, are keenly alive to the "distinction" of being tried by a "Red Judge." Like the "Artful Dodger," they think that if they must "Go off," it ought, at least, to be with a proper amount of "honour and glory." This predilection for colour is largely

shared by the public in the gallery who also like to see "his Lordship" in scarlet, and strongly resent the black silk gown of the mere Commissioner.*

The black silk gown, which is sacred to the King's Counsel, appears to have come into vogue about the time of the death of Queen Mary II., consort of William III., (1694), whose state mourning still to some extent affects the whole Bench and Bar. It resembles in shape the gown of a master of arts at Oxford and Cambridge, the coat over which it is worn, being in the style of the middle part of the reign of George III. The stuff gown of the junior Bar is of alpaca (formerly prunello), and of the same cut as that of a bachelor of arts. The two Geneva-like bands worn around the throats of judges and counsel began to supersede the standing ruff in James the first's time, and after the Restoration assumed a foppish richness in keeping with the "French fashions" that crossed the Channel with the Merry Monarch.

The wig, which came from the same quarter, and which has long been regarded as an

* For some remarks on this subject see "The Bystander" for June 19th, 1907.

integral part of the legal official dress, was at the outset strongly resented as an unwarrantable innovation. Not a few of the Judges, as Sir Matthew Hale, refused to wear the foreign headgear, but by the reign of James II., both Bench and Bar had succumbed to the prevailing fashion. One reason, perhaps, why the wig became so generally popular was because it was found "to lend gravity to the meanest countenance." The kind adopted by the lawyers soon became peculiar to them alone, and was readily distinguished from those worn by the middle and upper classes of laymen. At present, the 'full bottomed' or flowing wigs of Judges and King's Counsel, are reserved for occasions of state, such as attending royal levees, the reopening of the law courts after the long vacation, and in the case of his 'Majesty's Counsel,' on being called within the bar, and when conducting appeals before the House of Lords.

That robes and wigs lend a certain dignity to the practitioners of the law has been acknowledged even by American jurists such as Daniel Webster and Rufus Choate. One of these has left on record his opinion that

"the advantages arising from the use of a distinct costume by judges and counsel in its effect on the public who are in court and the feeling of responsibility it produces in the wearer, so far outweigh its disadvantages, if it have any, in the shape of personal discomfort." Judicial robes, it may be added, have long since been adopted by the judges of the Supreme Court at Washington, and the custom may in time spread to the whole of the American Bench and Bar.

The enormous advance in every department of education, and the thorough reorganization of studies which so strongly marked the progress of the nineteenth century, could not but effect even the inveterate conservatism of the Inns of Court. The change however was very gradual, and of all the learned bodies of the kingdom, few showed themselves more reluctant to adopt the examination system than the four great Societies of the law. With a view of excluding the badly informed from its membership, the Inner Temple did indeed institute, in the Trinity term of 1829, a preliminary examination in "classical attainments and the general subjects of a liberal education;" but the idea was not adopted by the other Inns, and as this

entrance examination was found to be prejudicial to the pecuniary interests of the Society in question, it was given up in 1847. But by this time, the question of legal education —as far as the Bar was concerned—had become a burning one. Law reading had been resumed at the Inner Temple in 1834 by Mr. John Austin, professor of law at the then recently established London University, and the well known author of lectures on "General Jurisprudence." After him the course was continued by Mr. Thomas Starkie. But the example of the Inner Temple—which showed itself to be so far in advance of the other Societies in matters educational—was not followed by the rest of the Inns of Court. A relic of the ancient readings known as "keeping exercises" was indeed in vogue among the students at Lincoln's Inn, but as it merely consisted in reading before the Benchers a few lines of a printed pamphlet—which could be purchased at any law publishers for a shilling—such a farce scarcely deserves to be noticed at all. Already the Law Society for the examination of candidates for admission as solicitors had been instituted in 1827 and incorporated in 1832. In 1846 a select committee on legal education

was appointed, and among those who gave evidence was Lord Brougham, an enthusiast for reforms of every sort. As the result of the finding of the committee, a council of eight Benchers, representing all the Inns of Court, was appointed to frame lectures "open to the members of each society," and five readerships were established in the several branches of legal science (1852). Attendance at these lectures was made compulsory, unless the candidate preferred submitting to an examination in Roman and English Law and Constitutional History. Three years later, a Royal Commission advised the establishment of a preliminary and final examination for all bar students, together with the formation of a Law University with power to confer degrees in law. The suggestions of the commission were only partially acted upon, and then not till 1870, when Lord Chancellor Westbury succeeded in getting a preliminary examination in Latin and English subjects adopted and the final examination made obligatory. The question of a Law University for London, which, as already remarked, had been first put forward in the reign of Henry VIII., was again brought into prominence in 1877, when a bill to erect such

an institution was introduced into the House of Lords, but dropped after the second reading. Equally unsuccessful was the more recent attempt of Lord Russell of Killowen to create a great School of Law which would have given London and the Empire a University of Jurisprudence, while leaving the disciplinary powers of the Inns of Court intact.

We cannot quit the subject of legal education without observing that the Bar, as a body, is by no means unanimous in its opinion as to the utility of law lectures. The peculiar nature of English law makes it a difficult subject to treat of academically, and this difficulty has by none been more clearly appreciated or expressed than by the distinguished French scholar, M. Taine. "It would be no easy thing," he remarks, "to deliver a course of lectures on English law. The law is not codified as in France, upon accepted philosophic principles, but consists of a mass of statues and precedents, more or less incongruous, and sometimes contradictory, which the future jurist must himself digest after long study . . . there is no historical school as in Germany, characterised by delicate tact and comprehensive views, and capable of explaining first the gradual adapta-

tion of law to custom, and, secondly its origin, its bearing and its limits.*

It is pleasing to be able to add while on the subject of legal education, that the ancient mootings which did so much in their day to promote a ready address and sound knowledge of the law among the aspirants to the bar, have been of late years revived in at least one of the Inns of Court. In 1875, a proposal to revert to the old form of exercise was "enthusiastically received by the students and barristers of Gray's Inn," and from that date the revival has passed into an established custom. The moots are held, we believe, fortnightly during term-time, and are open to all members of the Inns of Court; the discussions are strictly confined to legal subjects of practical utility, and the president, by whom the question is proposed, receives the same respect and deference as a judge of the High Court *in banco.*

The struggle of many noted barristers, during their period of briefless inactivity, has already been referred to, but not a few of those who court the law now-a-days with much

* "Notes on England," by H. Taine, translated with an introductory chapter by W. F. Rae. 5th edition, (London: Strahan and Co. 1873).

ambition, and but slender means, meet the difficulty by turning their attention to literary work, especially newspaper reporting, while waiting for Dame Fortune's favours. The names of those famous both on the Bench and at the Bar who have bridged over the interval between "call" and "retainers" by reporting in the "gallery" or within the precincts of the courts, would fill many a page. The list includes such legal "luminaries" as Mr. Justice Dowling of New South Wales, Lord Chancellor Campbell, Mr. Stevens, a noted master in Chancery, and Mr. Serjeant Spankie. Though Lord Russell of Killowen was never a "gallery" reporter in the ordinary sense, he did at the outset of his career write regularly for several papers, and on occasion, visited the "House" for "journalistic purposes."*

Press reporting by barristers had flourished for many years when an attempt was made in 1845 by some of the more conservative members of the profession to put a stop to an occupation which was considered by them as derogatory to the dignity of the long-robe.

* "The Inner and Middle Temple" by Hugh H. L. Bellot, M.A., B.C.L. (London: Methuen and Co. 1902).

Feeling ran high on the subject, and those counsel who persisted in chronicling for the newspapers in the Courts, were expelled the bar-mess. The custom, however, was too strong to be repressed by persecution, even by that of the dinner table, and in the end the "orthodox" section of the Bar gave way. Its conduct had, meanwhile, been pretty freely commented upon in the public press, Mr. Punch especially seizing on the "great reporting case" as a suitable theme for the exercise of the comic muse. *

With regard to law reporting proper, much was done by several members of the Bar at the commencement of the last century to improve this important branch of legal reference. The history of the compilation of year books or annual reports of cases, is involved in some obscurity, though Selden in

* The following is a specimen of Mr. P's effusions on this occasion :—

"I am anything but squeamish, *but stoop I to report!*
Why every curl would stand erect on every wig in court,
No never! Thus upon the Press, I place my solemn ban,
I, Brutus, Barrister-at-law, and 'honourable man'."

"Punch," Septr. 13th, 1845.

his "Commentary on Fleta," traces the practice to as far back as the reign of Edward II., when a certain Richard de Winchedon compiled a series of "Law Annals," or reports of cases of that period. From this time till the reign of Henry VIII., reports of cases were made by protonotaries, or official reporters, paid by the Crown. After this, reporting seems to have been left to individual lawyers, and it must be confessed that they did their work extremely well. Sir Edward Plowden, "the most accurate of all reporters," recorded the cases of the reigns of Edward VI., Mary and Elizabeth; the reports of Sir Edward Coke, as might be expected, are especially valuable, and they have often been reprinted. Under the Commonwealth, reports increased rapidly, those of Bulstrode published in 1657, being the most noted. After the Restoration, the licence of the Judges was required for law-reporting, but whether as a guarantee of accuracy or a check on the liberty of printing does not appear. Several volumes of reports of this period were issued by Mr. Henry Rolle, Sir Thomas Jones and Sir John Vaughan. Sir Edmund Saunders—whose rise from obscurity to eminence has been already

recorded—compiled those of the reign of James II., not, be it said, without an admixture of quaint humour which gained for him from Lord Mansfield the appelation of "the Terence of Reporters." It must have been these reports that Mr. Serjeant Maynard used to read in preference to any comedy.

Towards the latter part of George III.'s reign, so many barristers took to case-reporting that at one time there were no fewer than sixty so engaged in the various courts. Among these, Mr. Reginald Vaughan Barnewall, attained such eminence, that on his retirement from practice in 1836, the Lord Chancellor and Judges presented him with a handsome silver vase and illuminated address as a mark of their appreciation. * Still, the practice of private and irresponsible law-reporting was objectionable in many ways, one of these being the absence of any guarantee of accuracy, and in 1865 the system of semi-official reporting was resumed.

Lord Mansfield, as has been before remarked, did much in his day to purge the Courts of a

* These are now preserved in the museum of his *Alma Mater*, Stonyhurst College, Lancashire.

mass of antiquated lumber, and the opening years of the nineteenth century showed indications that ere long the axe of legislative reform would be laid to the root of the many evils that beset the administration of justice in this country. The successful efforts made to bring the criminal law into harmony with the growing humanity of the age has already been noted, nor were the changes introduced into the form and administration of the Civil law less beneficial in their effect. A series of parliamentary commissions and official recommendations led to the Bankruptcy Consolidation Act of 1849, and the Merchant Shipping Act of 1854. A statute of 1845 simplified the practice of conveyancing by ordering the omission of a multitude of foolish and wearisome details. Acts of Parliament, which up to about this time, were printed without capitals, paragraphs or punctation, the sentences running into one another, in fact, were rendered intelligible compositions, thanks to the enlightened suggestion of Mr. Symonds, one of the most painstaking and persevering of those who dedicated their lives to the achievement of law reform.

Amidst the progress of such general and

radical changes, it was inevitable that the Bar itself—to which profession not a few of the most ardent reformers belonged—should come in for a share of the alterations which were transforming both the theory and practice of the courts. In April, 1834, a mandate was obtained from William IV., at the instigation it is said of Sir John Campbell, the Attorney-General, abolishing the ancient privilege of the serjeants-at-law in the matter of exclusive practice in the Court of Common Pleas. By way of solatium—if such it could be called—the serjeants were to have "precedence and preaudience" next after the existing King's Counsel. The decree was, of course, vehemently opposed by those whom it most nearly concerned, and was finally declared illegal by the Privy Council on account of defect of form. The doom of the serjeants, however, was only respited not removed. In 1846 an Act of Parliament threw open the Common Pleas bar to all counsel indiscriminately, an event which practically meant the end of the ancient order of the coif, since the youngest Queen's Counsel had now both precedence and preaudience over the oldest serjeant. The rank itself involved

certain expenses by reason of some of the ceremonies already described, while this outlay brought with it no corresponding advantage other than that of belonging to a venerable and historic institution. The last Queen's serjeants to be appointed were Serjeants Byles, Channel, Shee and Wrangham in 1857, and by the Judicature Act of 1873—which consolidated the three courts of law at Westminster into the High Court of Justice—the Judges were no longer required to receive the coif on their nomination to the bench. This was the "last of an auld sang," and five years later, Serjeant's Inn, in Chancery Lane, was sold and the Order dissolved. It is still, of course, within the province of the Crown to revive the rank of serjeant-at-law, and in the opinion of certain legal circles such a step is certainly desirable, but so far nothing has been done. Considering the history of the Coif and its ancient pre-eminence both at the bar and on the bench, one cannot contemplate the extinction of the Order without some regret and emotion.*

* "The last of the Serjeants," Mr. F. L. Spinks died Dec. 27, 1899, aged 82. He received the coif in 1862.

## CHAPTER VII

THE introduction of railways, as might be expected, led to some complete changes in the customs and observances that in the course of centuries had come to be an integral part of the life of the English Bar. Till the establishment of the iron road, it was quite against all the canons of circuit etiquette for barristers to make the assize journeys by stage-coach or other public conveyance, the only permissible mode of transit for wearers of the long-robe being horseback, private coaches or posting. For this latter purpose it was usual for several to combine in hiring a post chaise, and so travel from town to town ensemble; but the arrangement, if economical, was not without its drawbacks. Story telling, cards, professional small talk and the like, soon exhaust their charms on a journey of some hundreds of miles, and where companionship is regulated by the purse and not by the head

and heart, ill-humour is bound to follow. Railway travelling did much to lessen if not to abolish the monotony and its consequent bad effects, which under the old regime sometimes ended in wayside duels and lasting enmities. When circuit going began to be made by railway, none of the robe were permitted to travel otherwise than first-class, a rule dictated as much by necessity as personal dignity, the third-class compartments in those days being little better than open cattle trucks.

"Going Circuit" in the good old times must, indeed, have proved as exciting as it was expensive. Highwaymen infested almost every road, and it was considered a capital joke by these gentry to "hold up" a judge, who in return of course not infrequently had the pleasure of sentencing Dick Turpin or Claude Duval "to hang by the neck till he was dead," a week or two later at the county assize town. No barrister ever travelled without a brace of loaded pistols in his brief bag, while a small army of Sheriff's marshal men and other armed retainers attended "their Lordships" as they passed on their round. In travelling from Newcastle to Carlisle in Charles II.'s time, the Bench and Bar were escorted along the road

by the tenants of the various manors, "a comical sort of people," Roger North assures us, "riding on nags, as they call their small horses, with long beards, cloaks and long broad swords with basket hilts." A truly formidable array, but one not at all out of place in the wild Border Country, where the lawless, freebooting lives of the Jocks of Hazeldene, and Wat Hardens were still a recent memory. Towards the middle of the eighteenth century, Judges gave up "riding circuit" and the Bar followed suit, the leaders in their own coaches and the juniors in the way already described. Wedderburn and Erskine—perhaps with a view of disabusing the southern mind of preconceived notions anent "beggarly Scotchmen"—were famous for the splendour of their equipages; on the other hand, Lord Eldon, even when Chancellor, went about in "a battered, ramshackle coach" that excited the derision of the street boys.

In the old days of posting and riding, when the Judges and Bar were often weeks together on the road, they lived in a round of assize balls, convivial meetings and "Noctes Ambrosianae," which made circuit time a

memorable event in the annals of the county towns, and an equally pleasant relaxation for the lawyers themselves. The bar-mess was a centre for "cultivating the social virtues," and as now, for enforcing on its members the observance of those unwritten laws and time honoured traditions which form the very backbone of professional etiquette.

The fines levied on delinquents—convicted after a "most painstaking farce of a trial" with the "mahogany" for bench of justice and the veriest "junior" as presiding judge—went, as we believe, they still do, to replenish the cellar with the generous beverage so conducive to "the feast of reason and the flow of soul." The memoirs of great judges and counsel are full of these good humoured enforcements of fraternal observance, than which nothing is better calculated to prevent the outbreak of those two distressing social maladies—bumptiousness and "swelled head." *

* The following extract is taken from the memoir of Lord Eldon in Lord Campbell's "Lives of the Chancellors."

"York, Grand Night, Thursday, 7th August, 1783.
Mr. J. Scott was congratulated on his Patent of Precedence, 2 gallons pd. . . . £2. 2. 0.

Though many a time honoured custom has fallen sadly from its once high estate, thanks to rail and motor, and degenerate counsel, at least that of the Home Circuit, dine nightly in London during Assize time, instead of at Lewes or Guildford, the old spirit of sociability still rules strong in the Inns of Court. A "Grand Night" festival there is a convivial event where distinguished visitors such as foreign ambassadors, literary "lions" and political magnates are the honoured guests of the evening. The ordinary barristers, or students, "commons" are swelled by extra courses and a "generous" allowance of wine, not to mention ale *ad libitum*. The loving cup circulates, toasts are proposed and on occasion

Mr. J. Scott was also congratulated on his election for Weobly, 1 gall. pd. £1. 1. 9.

Lent Assizes, Lancaster Grand Night, April 1, 1786.

"Mr. Scott for having debassed himself so much as to ask leave of the House of Commons to attend his Circuit was fined 1 gallon—Paid.

"Mr. J. Scott having been appointed Chancellor of Durham was congratulated thereupon by the title of "His Honour" in three gallons—By consent, paid."

The official body for "protecting the interests and etiquette of the bar" is the Bar Council of 1894, which superseded the old Bar Committee formed in 1883.

speeches delivered, all of which might help to convince—could they but step from their canvasses—the bygone Benchers and Judges who look down benignly in scarlet, ermine and sombre robe, on the present occupants of the hall, that old times are not forgotten nor old customs utterly annulled. Long may such good cheer and fellowship survive to form the golden link that joins the bustling apt-to-be-forgetful to-day with all that was best in the merry hearted conviviality of the past.

But it is not only on such occasions as the one just described, that the Inns of Court extend their hospitality to those of the profession and outside it. 'Grand Night' is a festival that can be adapted to other circumstances than those laid down in the calendar of the Bar. It sometimes assumes an international phase as when in November, 1864, judges and counsel of all grades foregathered to banquet and otherwise honour in the grand old hall of the Temple, Pierre Antoine Berryer, who fifty years before had gained an imperishable fame by his able defence of Marshal Ney. The aged doyen of the French Bar was the guest of a still older jurist, Lord Brougham, and his reception on this occasion by his brethren of

the English Inns of Court was one of enthusiastic cordiality. This graceful tribute to an illustrious advocate caused considerable sensation in France, and did much to remove the bad impression made by the trial of Dr. Simon Bernard some six years before.*

It would be interesting to know when the Bar of this country "discovered" that of America. There were at least two barristers of the Temple among the number of those who signed the Declaration of Independence, though how long the names of these gentlemen remained on the list of Counsel after they had appended their signatures to the memorable

* Dr. Simon Bernard, a French political conspirator was indicted at the Old Bailey on April 12, 1858, as an accessory to Orsini's plot—for the assassination of Napoleon III—which was admittedly hatched in London. The doctor was defended by the ill-starred Mr. Edwin James, Q.C., in a speech full of sensational appeals to the prejudices of the jury, who of course acquitted the prisoner. The trial which will live in judicial history as one of the most disgraceful of modern times, did much to confirm continentals in the belief that this country was the avowed protector of anarchy and assassination. The late Mr. George Sala, who was present in Court on this occasion, declares in one of his interesting reminiscences, that when Bernard left the dock after his acquittal he was heard to exclaim in a low, defiant tone: "But I did conspire!"

document, history sayeth not. If pressed for a reply, we should assign the date of the first overtures of international fraternity to about the time of the arbitration on the "Alabama Claims" (1871-2), and certainly there could not have been a more opportune occasion for the joining of hands. There is always a strong comic element in demands of this sort; and it is small wonder if these differences which begin with so much bluster almost invariably end in a laugh and a cheque. For one thing, they illustrate with what facility aggrieved moderns can (on occasion) put "the unjust steward" of the parable into the shade by sitting down quickly and writing out a bill in which five hundred pounds for a torn pillow-case and five guineas for a broken pencil, are but items among many. The Anglo-Saxon race which—conversely to the Latin nations and the Irish—has little humour in every day life but a great deal in politics, never fails to be genuinely amused at these Gilbertian situations which may not inapropriately be called the 'screaming farces' of diplomacy. The part of England on this occasion was most ably sustained by the Lord Chief Justice, Sir Alexander Cockburn, (minus wig and robes), and the

impression made by this distinguished lawyer on the American jurists led to the awakening of interests which in subsequent years was confirmed by the periodic visits of some of our greatest counsel to the United States. Mr. Serjeant Ballantine has left us his impressions of one of these legal tours in the interesting Supplementary volume to his "experiences": "The Old World and the New;" Lord Chief Justice Coleridge, was another link joining the Bar of both nations, while his successor, Lord Russel of Killowen, may be said to have done more to establish a good understanding between the two peoples than a dozen treaties. "In every city (of the United States) that he visited in public and in private, he preached the gospel of peace and goodwill between England and America, and his constant efforts in that direction had a powerful and enduring effect. Just before his last visit to America, he had been leading counsel for Great Britain before the Court of Arbitration which disposed of the long, vexed Behring Sea question, and he conducted his case with such perfect fairness and consummate ability that the triumph he won for his country left no sting behind, but

his opponents from that day were counted amongst his life-long friends and devoted admirers."*

The question is sometimes asked what are the natural qualities that make for success at the bar? Such an enquiry might of course be answered in two words—natural aptitude—but descending to particulars, we should say that given good health and sound constitution, the requisites for success at the bar, are fluency of speech, quickness of perception, not a little resolution, and last but certainly not least, the faculty of of "thinking on one's legs." Health is deservedly placed in the first rank, because every aspirant to the forensic career has above all things to remember that he courts a profession where, if the honours and emoluments be great, the conditions are no less exacting and severe. He must be prepared to pass long hours in close and often ill-ventilated courts, strenuously maintaining—perhaps against some of the greatest intellects of the day—the honour and interests of his clients. Further, the immediate preparation for this are longer hours of study of brief and precedent, close

* Mr. Choate *at supra.*

consultation with solicitors, and should the case involve much technical information, a large amount of extraneous reading as well.* If the sorely tried counsel breaks down beneath this strain on his mental and physical powers, he must for an indefinite period abandon all idea of practice, and most likely by the time he returns to the Courts, others of greater endurance have taken his place. Even the very measure of a barrister's success tends to abridge his hours of relaxation. When work in Court and Chambers is done, the leading 'K.C.' has often to be off, perhaps some fifty miles, to address meetings, or preside at functions. If he have 'M.P.' attached to his name, then the drudgery of "full practice" is followed every night by a second round of hard labour at St. Stephen's.

By fluency of speech—which we gave as the first indispensable qualification for a barrister after the blessing of good health—we mean that evenness of address which clearly expresses facts as they are, and never wants for a word.

*While engaged on preparing the defence of Mrs. Maybrick in the great Liverpool poisoning case (Aug. 1-7, 1889), Sir Charles Russell, Q.C., M.P., her leading counsel, devoted the evenings of several weeks to the study of poisons under the guidance of an eminent specialist.

Of course, if eloquence exists native, it is always a great advantage to the possessor, but, it is by no means essential. Consulted on this very question, Lord Russell gave it as his opinion that he considered it by no means easy to influence juries "by oratorical fireworks;" they are not to be dazzled by rhetoric, but on the contrary "want the facts put before them in a clear, telling, forcible way."*

It has been well said of the barrister that he above all others combines in himself the qualities and accomplishments represented by the phrase "a gentleman and a scholar." The splendid scholarship of the English Bar has ever been one of its most salient characteristics, and the proportion of well-read men in its ranks is still, perhaps, greater than that of any other profession. The study of the law, comprising as it does a competent knowledge of at least two foreign languages in addition to constitutional history, commercial principles and the elements of philosophic jurisprudence, will to a certain extent account for this all round information on the part of the gentlemen of the long

* Character Sketch of Lord Russell of Killowen (Sir Charles Russell) *Review of Reviews*, Sept. 15th, 1900.

robe. Whether the university training which so often precedes or accompanies membership of an Inn of Court, has much to do with this erudition, has been doubted by not a few. It is notoriously a fact that in the present as in the past, many students merely regard Alma Mater as a convenient means of shortening the keeping of terms, and concentrate their energies on such works as Hunter's "Roman Law," and Stephen's "Commentaries" to the almost total neglect of academic studies. On the other hand, many whose names are writ large on the forensic roll of fame, were never at any university. Serjeant Ballantine went to the Inner Temple straight from St. Paul's School; Sir Thomas Noon Talfourd, Judge of the Common Pleas, passed from Dr. Valpy's Academy at Reading to the study of the law; Serjeant Parry quitted "the desk's dull wood" of a commercial house for the same purpose; Sir Robert Lush exchanged the routine of a solicitor's office for the bar; the late Mr. Montague Williams, one of the most painstaking and sympathetic of London magistrates, was alternately a schoolmaster, an officer in the army and an actor before he decided to try his fortune as a pleader. Other instances could

easily be given of those who graduated in that far wider university—the world—and were thus enabled to bring to the bar that deep knowledge of men and affairs which, in conjunction with their natural talents and legal reading, quickly brought them to the very front rank of their profession.

Though a sense of humour—often it must be confessed of a very elephantine sort—has never been wanting to the English Bar, it cannot be said to have constituted till quite recently, a very noticeable feature in our forensic annals. The flow of humour, rich, telling and racy of the soil, which has characterised the Irish Bar from the days of Curran and O'Connell, Norbury and Sheil, has found but few exponents among counsel over here. In fact, the highest flights of fancy in this respect have mainly been expended on legal jokes and puns, "understanded" only of the profession, or on rare occasions in laughing a preposterous case out of Court. Thanks to an eminent Judge who still graces the bench, cases now come before the public flavoured with a little more Attic salt than heretofore, though when the history of the wit and humour of our Courts comes to be written, it is the name of Sir Frank Lockwood

that will loom the largest over its pages. It has been said that no one is really necessary in this life, but though ten years have come and gone since Frank Lockwood's death, a successor has yet to be found for the place left void by him who was cut down in the very noonday of his career. To have heard the breezy humour, the brilliant, never unkind repartee of this accomplished lawyer and large hearted man, was a liberal education in all that pertained to the lighter side of life, and hundreds who knew him only by name still mourn his loss as that of a dear friend.* It has sometimes been asserted that because the

* The wit and humour of Sir Frank Lockwood was of that superior kind which extracts fun even out of the most ordinary circumstances. Perhaps the best example of this is the incident related by himself in a most amusing speech at a dinner after the Bar Point to Point races. "It appeared," so runs the report, "that Sir Frank had been welshed to the extent of a sovereign during the meeting. The bookie had first requested Lord Alverstone [the Lord Chief Justice] to have "something on," and the Lord Chief had laughingly directed him to Sir Frank as more likely to make a bet with him. From this basis Sir Frank constructed a most amazing story in which he insinuated that the gentleman in the Tyrolese hat, as he called the welsher, had plotted with the Lord Chief to obtain his sovereign: he was not sure, but he was almost certain that he had seen them divide the spoil behind the grand stand after the races ! !"

Bench and Bar of this country adhere with a pertinacity truly national to ancient forms and usages, this would seem to indicate an inherent partiality for out-of-date methods wholly incompatible with the speedy administration of justice. The truth is that beneath this regard for old time ceremonial, there runs not only the strong wish but also the strenuous effort to do justice between man and man. The early labours of the Bar in the direction of law reform have already been described, and from the days of Romilly and Brougham down to the present, these have resulted in an almost complete transformation of the judicial system. That something remains to be done in the way of simplifying indictments and revising the composition and powers of courts of Quarter Sessions is admitted, but, on the other hand, legislation has not been idle. Prisoners can now give evidence on their own behalf, and if too poor to retain counsel are supplied with legal defence—out of the rates. Finally, the Criminal Appeal Act of 1907 gives under certain conditions, a convicted prisoner the right to appeal on a question of law or fact or both to an Appeal Court of nine judges presided over by the Lord Chief Justice. For

the rest, we may be assured that the impartiality of the Bench and the integrity of the Bar will ever co-operate to prevent any real miscarriage of justice. Should any such misfortune arise, it will be because human equity, like all things terrestrial, is liable to err in spite of every effort to the contrary made by those who are themselves journeying through shades and shadows to the full light of truth.

*N.B.—The writer begs to acknowledge his indebtedness to the Rev. Oswald Turner of Woburn Park, Weybridge, for his kind assistance in reading through the proofs.*

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